UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection	**)** **)** **)**	**Docket No. RM21-17-000**

REPLY COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

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The California Independent System Operator Corporation (CAISO) submits these Reply Comments in response to the Federal Energy Regulatory Commission's (Commission) Notice of Proposed Rulemaking (NOPR) in the captioned docket.[1]

I. EXECUTIVE SUMMARY

The CAISO supports the NOPR's general long-term objectives to plan for anticipated future generation and demand, identify resource zones in transmission planning processes, and undertake more proactive, scenario-based, forward-looking transmission planning. As discussed in the CAISO's initial comments on the NOPR (Initial Comments),[2] the Commission should provide general principles for long-term planning for transmission providers to implement, but it should afford transmission providers sufficient flexibility to develop and implement the specific reforms they believe are necessary to achieve these objectives in their regions, while accounting for regional differences and the challenges they face. Such flexibility is particularly justified for independent transmission providers like independent system operators (ISOs) and regional transmission organizations (RTOs). The Commission should not impose "one-size-fits-all" requirements on every planning region. Further, the Commission should not unduly disrupt or undo existing planning processes and approaches that are

[1] 179 FERC ¶61,028, 87 Fed. Reg. 26504 (2022). Capitalized terms not otherwise defined herein or in the NOPR have the meaning set forth in the CAISO tariff.

[2] The CAISO filed its Initial Comments in this docket on August 17, 2022.

functioning well and enabling transmission providers to plan for system needs efficiently and cost-effectively.

The CAISO's Reply Comments (1) highlight the comments of the ISO/RTO Council (IRC) and CAISO stakeholders who stress the need for transmission provider flexibility in implementing a final rule in this proceeding (Final Rule), (2) seek clarification of certain NOPR proposals in response to parties' comments, (3) address initial comments that seek a Final Rule that goes far beyond the proposals in the NOPR and/or would dramatically alter and disrupt existing practices without providing significant benefits, and (4) rebut arguments supporting certain NOPR proposals that the CAISO believes should not be adopted. The following is an overview of the key issues addressed in these Reply Comments.

The Need for Transmission Provider Flexibility

The CAISO, the IRC, CAISO stakeholders, and numerous other commenters urge the Commission to provide planning regions with the authority and flexibility to implement long-term planning tailored to the specific needs and circumstances of their regions and not establish an overly-prescriptive set of requirements or unduly disrupt existing planning processes that are working well. For the CAISO, this means (1) allowing the CAISO to retain its ability to evaluate needs driven by public policy requirements in its annual transmission planning process (in addition to implementing Long-Term Regional Transmission Planning), (2) not requiring transmission providers to develop a minimum number of Long-Term Scenarios (but if the Commission requires a minimum number, it should be three), and (3) granting the CAISO flexibility to continue to utilize resource portfolios and geographic zones identified by state agencies, as

supplemented with information from local regulatory authorities, rather than requiring the CAISO to undertake all of the work required to develop its own resource portfolios, which would be unnecessary, duplicative, and burdensome.

Retaining the CAISO's Sequential Review of Reliability, Public Policy, and Economic Needs in the Annual Transmission Planning Process

Some commenters state that planning processes that consider reliability, public policy, and economic projects sequentially are inappropriately "siloed" and fail to capture the multiple benefits a project can provide. These commenters fail to recognize that planning processes can consider different categories of needs but nonetheless holistically account for a variety of benefits provided by a transmission solution. Although the CAISO's planning process considers reliability, public policy, and economic needs and projects sequentially, it allows the CAISO to revisit projects identified in a prior stage if an alternative project identified in a subsequent stage can meet the previously identified need and provide additional benefits not considered in the prior stage. Thus, the CAISO's iterative planning process ultimately allows the CAISO to consider and approve transmission projects with multiple benefit streams (*e.g.*, reliability, public policy, and economic) and to modify or upsize transmission solutions identified in earlier stages in order to achieve additional benefits. The CAISO does not require consolidating the various categories of transmission drivers to achieve this result.

The NOPR correctly proposes portfolio planning as an *option* for transmission providers, not a requirement. The CAISO's iterative process already provides for holistic planning, accounts for all benefits a transmission project may provide, and recognizes that high-voltage facilities benefit all customers on the system regardless of

the specific driver for the project (and allocates the costs accordingly). The CAISO does not need to implement a formal balanced portfolio framework to achieve these objectives. Further, the CAISO's iterative approach ensures that every project the CAISO approves is needed and does not allow "borderline" or unneeded proposals to be approved simply because they are part of a portfolio.

Finally, certain commenters' proposals to apply the principles of Long-Term Regional Transmission Planning to economic planning (in addition to public policy planning), or seek to have economic needs considered only in the new Long-Term Regional Transmission Planning process, are problematic and would make regional planning processes less effective. Economic projects are often needed in the 10-year planning horizon and thus should be evaluated annually, not every three years. Precluding the CAISO from considering economically-driven transmission needs each year in its comprehensive *annual* transmission planning process would hamper the CAISO's economic planning and prevent economic projects needed within the 10-year planning horizon from being approved on a timely basis. Further, it would be detrimental to customers because it would preclude the CAISO from designing and approving in its annual transmission planning process more efficient or cost-effective multi-benefit projects that could meet economic needs in addition to reliability and public policy needs. To the extent commenters' proposals would permit transmission providers to continue evaluating economically-driven transmission needs in their annual planning processes, but would require transmission providers to apply the Long-Term Regional Transmissions Planning principles to such processes, that would impose undue burdens and significant additional work on transmission providers without

corresponding benefit. The Long-Term Regional Transmission Planning requirements require significant effort on the part of transmission providers and stakeholders. Imposing such requirements on annual transmission planning (as opposed to Long-Term Regional Transmission Planning conducted every three years) would be problematic.

Coordination of the Transmission Planning and Generator Interconnection Processes

Commenters offer no compelling reasons to adopt the NOPR's proposed mechanism intended to promote coordination between the generator interconnection and transmission planning processes. Although well-intended, this proposal would unnecessarily increase transmission planners' burdens without making the transmission planning process more effective. The NOPR proposal inappropriately looks backward, not forward. It can force transmission planners to focus on outdated data and conditions, not current information and needs. The proposal does not even require that the interconnection-related network upgrade be identified in the most recent interconnection queue study cycle. The mere fact a transmission project was identified in prior interconnection study processes as long as five years ago may have no relevance to the current transmission planning cycle. An interconnection customer may have withdrawn its project because it was unable to secure a power purchase agreement, or generation at the proposed location is neither needed, nor wanted. Adopting the NOPR proposal will only put additional burdens on transmission planners without providing commensurate benefits.

One commenter makes a misplaced attempt to compare the NOPR proposal to the CAISO's ability under section 24.4.6.5 of its tariff to study in the transmission

planning process potential expansions of, or modifications to, interconnection-related network upgrades identified in interconnection study processes (*i.e.*, the LGIP Network Upgrade provision). The LGIP Network Upgrade provisions allow the CAISO, in the transmission planning process, to upsize, expand, or add to facilities identified in the Phase II Interconnection study that have not yet been reflected in an executed generator interconnection agreement. Thus, the LGIP Network Upgrade provision sets forth a process under which the CAISO looks at current circumstances, not circumstances from years ago. The Commission should not adopt its NOPR proposal and certainly should not replace the CAISO's existing tariff provision with the NOPR proposal. They are not interchangeable.

Cost Allocation Processes

The Final Rule should not compel transmission providers to give state entities a decisional role on cost allocation issues. The Final Rule should instead allow for public utilities like the CAISO to take into account the views of state entities and other key stakeholders in developing cost allocation proposals, including the views of municipal utilities, electric cooperatives, and other interested stakeholders affected by transmission projects.

The courts and the Commission have long recognized that a public utility cannot be compelled to relinquish any of its statutory rights to file transmission rates under Federal Power Act (FPA) Section 205 to another entity. These rights include the rights of a public utility to propose how to allocate costs for transmission facilities under its control.

Several public power commenters raise concerns about the potential inequities of providing a single state entity in each state a decisional role on cost allocation even though municipal utilities and other public power entities are generally not regulated by each state's primary utility regulator. Further, although in the CAISO most participating transmission owners (PTOs) with load are in a single state, one PTO load is not in California. There are serious legal issues with mandating a decisional role for state entities in cost allocation. Federal appellate court and Commission precedent make it clear that the Commission cannot compel a public utility in a particular planning region to relinquish any of its statutory rights under FPA Section 205 to another entity, including a state entity or other non-public utility. For sound legal and policy reasons, the Commission should permit public utility transmission providers to propose a cost allocation methodology in compliance with the Final Rule that takes into account the views of state entities and interested stakeholders and that satisfies the six regional transmission cost allocation principles adopted in Order No. 1000. If the Commission instead continues to pursue the state entity approach in the Final Rule, the Commission should clarify how the CAISO should treat municipal utilizes in California and the coop load in Nevada that is not regulated by a California regulatory authority.

Review of Maintenance and Asset Management Projects in the Regional Transmission Planning Process

In the CAISO, unlike in some other planning regions, transmission owners can only approve maintenance and asset management projects that do not expand the grid (other than incidentally) in their local processes. They cannot approve "local" transmission expansion projects. Only the CAISO can approve projects that upgrade and expand the transmission system.

The Commission should reject one commenter's request to require that transmission providers review and approve in their regional transmission planning processes all maintenance and asset management projects anticipated to cost $3 million or more. The Commission has found the bifurcated framework in the CAISO planning region complies with Order Nos. 890 and 1000. There is no evidence in the record that would support a finding that this aspect of the CAISO's planning process has become unjust and unreasonable. Requiring the CAISO to review and approve maintenance and asset management projects in its transmission planning process would drastically change the CAISO's role and impose an unwarranted and significant burden on the CAISO, consuming resources better spent on important transmission planning matters, like implementing effective Long-Term Regional Transmission Planning. The CAISO is not well-positioned to assume this role. It does not have the information, asset familiarity, expertise, or sufficient staff resources, nor is it located near all of the transmission assets, to review, assess, and approve every transmission maintenance and asset management project effectively and comprehensively.

Further, the CAISO need not oversee PTOs' maintenance and asset management projects. Because they cannot approve expansion projects in their maintenance and asset management processes, CAISO transmission owners cannot "evade" competition for transmission projects, favor their own projects, or discriminate against other transmission developers. Maintenance and asset management processes cannot supplant the CAISO's planning process. If the CAISO has not identified a transmission need in an area of the system where a maintenance project is occurring, there is no compelling reason for the CAISO to review and approve that maintenance

project. If the CAISO has identified a transmission need in the area, the CAISO will already be aware of the maintenance project and, if a modified maintenance project can meet the need in the more efficient or cost-effective manner, the CAISO can approve a "right-sized" project to meet the identified transmission need.

Parties' initial comments both support and oppose the Commission's proposal to grant a right of first refusal (ROFR) for incumbent transmission providers to construct a local transmission facility at 230 kV or above that is being replaced and that the transmission provider has determined should be "right-sized" to meet a regional transmission need. Based on the examples provided in the NOPR, such "right-sized" facilities essentially constitute upgrades or additions to, or replacements to a part of an existing transmission facility and, as such, should be subject to a federal ROFR consistent with Order No. 1000. To the extent the transmission provider is approving an entirely new, and different, greenfield transmission line where none has existed before and such line meets additional needs compared to the line being retired, *i.e.*, it is a new line with different points of interconnection than the line being retired, such a facility would be subject to competitive transmission processes under existing rules.

Transmission Planning Oversight

The Commission should also reject requests to require independent system operators (ISOs) and regional transmission organizations (RTOs) to have independent monitors to monitor their transmission planning processes and decisions. This is wholly unnecessary and potentially problematic. If a specific transmission provider violates its tariff or engages in unduly discriminatory behavior, the Commission should take action against that transmission provider. The appropriate corrective action is not to impose

an independent transmission monitor requirement on every transmission provider in the country especially given the lack of evidence all such transmission providers are engaged in any unjust and unreasonable conduct. An independent transmission monitor cannot provide greater transparency into the planning process than already exists. The conditions that may necessitate using an independent market monitor simply do not exist in the transmission planning context. If the Commission desires more insight into regional transmission planning processes, it should retain the necessary personnel. That would be much more efficient and effective because only the Commission has authority over regional planners; an independent monitor has no authority.

Proposed Expansion of Projects Subject to Competitive Transmission Processes

Some commenters recommend that all projects down to 100 kV be subject to competitive solicitation. This is unnecessary to achieve the NOPR's primary planning goals, will (1) create potential cost allocation challenges and "seams" issues with the distribution system, (2) unduly increase transmission planners' burdens and costs, and (3) delay project approvals. On the CAISO system, the significant transmission buildout needed to access energy resource zones and anticipated future generation to support achievement of climate goals will be driven by high-voltage transmission facilities, not low-voltage transmission facilities. These high-voltage facilities are already subject to competitive solicitation.

Claims that projects down to 100 kV are regional facilities and provide regional benefits on every transmission system are unsubstantiated. The CAISO demonstrated in the Order No. 1000 compliance process that facilities on its system below 200 kV

approved in the transmission planning process are not regional facilities and do not provide regional benefits unless they extend between the CAISO Balancing Authority Area (BAA) and another BAA or between two PTOs. Facilities below 200 kV approved in the transmission planning process are first and foremost local facilities used to deliver energy already transmitted over higher voltage transmission facilities to load pockets to meet transmission owners' service obligations and to deliver local generation to local areas. The CAISO is also concerned about the potentially far-reaching cost allocation implications and potentially dramatic cost shifts that might arise from any generic finding that transmission facilities down to 100 kV provide regional benefits and constitute regional transmission facilities for competitive solicitation purposes.

In Order No. 1000, the Commission expressly declined to eliminate the ROFR for transmission owners to build local transmission facilities to meet their reliability needs and service obligations within their own retail distribution service territory or footprint. No commenter discusses the possible implications of changing existing policy and practice to allow non-incumbents building local transmission facilities. The CAISO's experience shows there is greater operational complexity on the lower-voltage transmission system than the high-voltage transmission system. The CAISO's lower-voltage transmission system is much more integrated with the distribution system than the high-voltage system is. Operating lower-voltage facilities thus requires greater coordination between the transmission and distribution systems. Opening the local transmission system to competition could create a fragmented, patchwork local system that will intersect with an incumbent utility's distribution system. This raises potential

coordination and seams issues at both the transmission and distribution levels. The CAISO provides an actual example to demonstrate these challenges.

Finally, the Commission should reject requests to allow state entities to decide whether a region should conduct competitive transmission processes and what the scope of those processes should be. This would contravene the Section 205 rights of public utilities, including ISOs and RTOs, to determine the terms and conditions of transmission service and transmission planning on their systems. Public utilities can voluntarily concede these rights to third-parties, but they cannot be compelled to cede their rights.

II. REPLY COMMENTS

A. The Commission Should Grant Transmission Planners Significant Flexibility in Implementing Long-Term Regional Transmission Planning

In its Initial Comments, the CAISO stressed that any Final Rule in this proceeding should grant transmission planners maximum flexibility to implement long-term regional transmission planning into their existing transmission planning frameworks.[3] The CAISO's Initial Comments noted that several of the NOPR's proposals were problematic and overly prescriptive in the level of detail they would require for long-term planning.[4] The CAISO highlighted three NOPR proposals of particular concern. First, the NOPR proposal to decouple public policy planning from economic and reliability planning in annual transmission planning processes would

[3] CAISO Initial Comments at 2.

[4] *Id.* at 1-2.

significantly undermine comprehensive and cost-effective transmission planning in the CAISO region. The CAISO's experience shows there is a need to approve public policy projects on an annual basis, not every three years (as the NOPR contemplates for long-term regional transmission planning), to meet identified needs within a 10-year timeframe. Also, eliminating the CAISO's ability to consider public policy projects in the annual planning process would render the CAISO unable to approve more cost-effective or efficient transmission projects that meet public policy needs in addition to meeting reliability needs or providing economic benefits.[5] Second, the CAISO explained that the NOPR's proposal to require transmission planners to develop a minimum of four Long-Term Planning Scenarios was too prescriptive, unsupported, and unnecessary. The CAISO recommended that the Final Rule not require a minimum number of Long-Term Scenarios, but if the Commission were to adopt a minimum number, it should be three, which is the number of scenarios the CAISO typically uses in its public policy needs assessments.[6] Third, the CAISO expressed concern that the NOPR proposal regarding the requirements for identifying geographic zones, could cast aside an existing regional practice that is working effectively – namely the CAISO's use of resource portfolios developed by the California Public Utilities Commission (CPUC). The CAISO urged that any Final Rule clarify that transmission providers have the discretion and flexibility to continue utilizing resource portfolios and energy zones developed by state and local regulatory authorities and are not required to undertake all of the studies and activities

5 *Id.* at 13-20.

6 *Id.* at 21-26.

required to identify resource portfolios or geographic zones for resource development themselves.[7]

The IRC's Comments echo the CAISO's sentiments. The IRC "respectfully requests that the Commission, in any final rule, provide each region flexibility to tailor a long-term planning construct that accommodates regional differences, so long as the construct accomplishes Commission-stated long-term planning principles, objectives, and parameters."[8] The IRC also notes that on certain issues the "NOPR is overly prescriptive in the level of detail required to conduct long-term planning."[9] The IRC suggests that "instead of prescribing detailed procedures … the final rule should state high level, long-term planning principles that transmission planners must consider, and then authorize them to craft their own processes that are tailored to each region's needs."[10]

Initial comments submitted by CAISO stakeholders likewise overwhelmingly support the need for regional flexibility in implementing long-term regional transmission planning.

- The California Public Utilities Commission (CPUC) stresses that the long-term regional transmission planning reforms should allow for regional flexibility in implementation and should not mandate a one-size-fits-all overlay of detailed requirements.[11] The CPUC notes that in regions like the CAISO that already include core long-term planning elements a "one-size-fit-all overlay of additional, detailed requirements could require a

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7 *Id.* at 27-33.

8 IRC Comments at 2.

9 *Id.* at 4. For example, the IRC noted that "the Commission should require transmission providers to use multiple scenarios in long-term planning scenario analysis, but not specify a minimum and maximum number for use in the studies, leaving that instead for the regions to determine." *Id.* at 9.

10 *Id.* at 5.

11 CPUC Comments at 9-10.

significant dedication of resources to ensure compliance without necessarily improving planning outcomes."[12] Among other things, the CPUC urges the Commission not to proscribe overly detailed requirements governing the number and range of long-term scenarios.[13]

- The California Energy Commission (CEC) "highly recommend[s] allowing flexibility in the number of scenarios to be considered" and requests that "the scenario requirements do not prevent a transmission planner from relying on scenarios developed by other agencies."[14]

- Pacific Gas and Electric Company (PG&E) stresses that "the long-term planning process adopted by the Commission should not be rigid," and "the Commission should allow for flexibility in the use of long-term planning scenarios and factors that best reflect the significant regional differences among RTOs/ISOs across the country."[15]

- Southern California Edison Company (SCE) states that the "Commission should allow for flexibility in the use of long-term planning scenarios and factors given the significant regional differences among the RTOs/ISOs across the country."[16] SCE recommends "the Commission not decouple policy projects from reliability and economic projects in transmission planning."[17]

- The California Municipal Utilities Association (CMUA) "urges flexibility in application of any new regulations" and states "[p]olicy objectives clearly differ from region-to-region, and this should be reflected."[18]

- The Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) argue the Commission should grant ISOs and RTOs "substantial discretion in structuring their planning

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12 *Id.* at 10.

13 *Id.* at 21-25.

14 CEC Comments at 2.

15 PG&E Comments at 2.

16 SCE Comments at 3.

17 *Id.*

18 CMUA Comments at 5.

processes to best achieve such overall objectives rather than imposing a detailed set of 'one-size- fits-all' requirements."[19]

- The California Department of Water Resource State Water Project (SWP) states that "the Commission should make identification of geographic zones mandatory, but allow each region to determine how to implement a solution."[20]

The Commission should take the common theme of these numerous comments into account and provide planning regions with sufficient authority and flexibility to implement long-term planning tailored to their specific needs and circumstances. In other rulemakings, the Commission has found that independent entities such as ISOs and RTOs should have the flexibility to propose compliance filings that differ from the standard approach contemplated in the final rule in ways that fit the needs of their region.[21] The Commission should not establish an overly-prescriptive set of requirements or unduly disrupt existing planning processes that are working well. For the CAISO, this means (1) allowing the CAISO to continue evaluating needs driven by public policy requirements in its annual transmission planning process (in addition to implementing Long-Term Regional Transmission Planning), (2) not requiring a minimum number of Long-Term Planning Scenarios (but if the Commission decides a minimum number is necessary, it should be three, not four),[22] and (3) giving the CAISO the

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19 Six Cites Comments at 4.

20 SWP Comments at 16, citing the CAISO's initial Comments on the Advanced Notice of Proposed rulemaking (ANOPR) in this docket and summarized at paragraph 136 of the NOPR. The Commission issued the ANNOPR on July 15, 2021. 179 FERC ¶61,024.

21 *See Improvements to Generator Interconnection Procedures and Agreements*, Notice of Proposed Rulemaking, 179 FERC ¶61,194, at P 6, 87 Fed. Reg. 39,934 (2022).

22 Consistent with the CAISO's Initial Comments, the Western Public Interest Organizations (WPIOs) state that Western Regional Planning Groups, including the CAISO, should consider the development of at least three scenarios. WPIOs Comments at 33. The WPIOs identify the scenarios as a base case, likely-to-occur scenario, a second "expanded scenario", and a third, low-frequency, high impact extreme weather event scenario. *Id.*

flexibility to continue utilizing resource portfolios and geographic zones identified by state agencies, as supplemented with information from local regulatory authorities, rather than requiring the CAISO to undertake all of the work required to develop its own resource portfolios, which could result in unnecessary, duplicative, and burdensome work.

B. The Commission Should Not Unduly Disrupt, Overhaul, or Eliminate Existing Annual Transmission Planning Processes that Are Functioning Effectively

A few commenters object to the purportedly "siloed" planning that occurs when transmission planners separately assess reliability, public policy, and economic transmission needs on a project-by-project basis.[23] The Clean Energy Associations allege that maintaining silos ignores that transmission benefits can overlap across these categories and produce unjust and unreasonable rates. The Clean Energy Associations recommend that the Commission consolidate these processes or at least provide transmission providers the *option* to eliminate silos.[24] ACEG and ACORE agree that the existing approach to short-term reliability planning should continue, but they recommend the Commission apply the long-term transmission planning principles to economic and long-term reliability planning processes.[25] ACEG and the PIOs argue that transmission providers should study projects as portfolios rather than each project in isolation.[26] The PIOs state that when evaluated together, separate projects that are each designed to

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[23] Americans for a Clean Energy Grid (ACEG) Comments at 31; American Council on Renewable Energy (ACORE) Comments at 7-8; Clean Energy Associations Comments at 8; Public Interest Organizations (PIOs) Comments at 29-32.

[24] Clean Energy Associations Comments at 8.

[25] ACEG Comments at 30-31; ACORE Comments at 7-8.

[26] ACEG Comments at 31; PIO Comments at 31.

reduce congestion on different parts of the transmission system may create reliability, public, policy, and/or economic benefits that would not exist if only one of the projects were constructed.[27] The CAISO explains below why these comments are misplaced.

1. Siloed Planning vs. Serial, Holistic Planning

In considering these comments, the Commission should look beyond the conclusory assertions and instead focus on how a transmission provider's planning process actually functions to determine if it achieves the Commission's objectives. For example, the fact the CAISO's planning process reviews reliability, public policy, and economic transmission solutions in a sequenced and layered manner to produce a comprehensive plan based on solutions that ultimately may meet multiple needs -- but does not consolidate the various transmission categories into a single "multi-value" category of transmission or approve projects on a "balanced portfolio" basis -- does not mean it is inappropriately "siloed" or fails to plan the system holistically. The Commission should not undo the CAISO's transmission planning process (or any other transmission provider's planning process) that holistically plans the system to meet identified transmission needs, effectively promotes achievement of the goals articulated in the NOPR, fairly allocates costs, and recognizes all of the benefit streams a project provides simply because the CAISO's planning process has no defined multi-value project category of transmission, considers transmission solutions on a project-by-project basis, and/or does not employ a so-called "balanced portfolio" approach.

As the CAISO explained in its Comments on the ANOPR, although the CAISO does not have a category of transmission labelled "multi-value" and its transmission

[27] PIOs Comments at 31.

planning process considers transmission needs sequentially, the CAISO's planning process allows the CAISO to approve transmission projects with multiple benefit streams and modify projects identified earlier in the process.[28] Specifically, the CAISO explained:

> The CAISO considers reliability needs and solutions first, followed by public policy solutions, and then economic solutions. At each stage of phase two [of its planning process], the CAISO may modify or enhance a solution identified in an earlier stage to meet the next level of need (and the previously identified need) more efficiently or cost-effectively, or it may adopt an entirely new solution to meet both needs. For example, a public policy need can cause the CAISO to modify the initial solution it identified for a reliability need if a proposed public policy solution meets both needs more efficiently or cost-effectively. In such a case, the CAISO would categorize the solution based on the latter-studied benefit type, in this example, a "policy-driven" transmission project; although, the transmission solution would provide multiple benefits. Likewise, an economic study can change or modify the preferred initial solution for a reliability need, a public policy need, or both. The CAISO finalizes its preferred solution only after it completes all three stages. The CAISO's iterative approach allows the CAISO to approve transmission solutions that provide multiple benefit streams (*e.g.*, reliability, public policy, and economic). Thus, the CAISO does not need a separate multi-value category of transmission to approve transmission projects that provide multiple types of benefits.[29]

The CAISO further stated:

> Using TEAM [the CAISO's Transmission Economic Assessment Methodology], the CAISO identifies its preferred transmission solutions. If a solution identified in the economic study is more efficient than a solution identified in the reliability or public policy evaluations, and can meet the applicable reliability or public policy needs, the CAISO will include the economic solution in the transmission plan, and it will categorize the solution as an economic project.[30]

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28 CAISO Comments on ANOPR at 22-23, 31, 77-78, available at Microsoft Word - ANOPR_Comments (caiso.com); *see also* CAISO Comments on NOPR at 13-15, available at Microsoft Word - TRANSMISSION_PLANNING_NOPR-OPENING_COMMENTS (caiso.com)

29 CAISO Comments on ANOPR at 22-23 (footnotes omitted).

30 *Id.* at 31.

Thus, under its economic evaluation methodology, the CAISO considers the avoided cost of an earlier identified reliability (or public policy) project as an economic benefit in its assessment of economic projects.[31]

Accordingly, claims that "serial" transmission planning processes do not permit transmission providers to consider and approve projects with multiple benefits are incorrect. The CAISO's sequential transmission planning process allows it to "back out" of previously identified reliability projects (and public policy projects) if the needs can be addressed by another subsequently considered project and count the avoided cost of a separate reliability (or public policy) project as an economic benefit. Thus, the CAISO's sequential and iterative review process allows it to approve projects with multiple benefit streams. The Commission should not undo the CAISO's well-functioning planning process simply because some commenters prefer a consolidation of the various transmission categories or a balanced portfolio approach.

These commenters seem hung-up on the superficial fact that a planning process evaluates transmission solutions on a project-by-project or need-by-need basis. The commenters fail to dig deeper to examine how the overall planning process functions holistically, *i.e.,* they narrowly focus on the individual components of process rather than how the various components function in an integrated and holistic manner. The commenters wrongly assume that just because a transmission provider approves transmission solutions using a project-by-project approach it necessarily must be

[31] CAISO Transmission Economic Assessment Methodology (TEAM), section 2.5.7 (TEAM Document), available at http://www.caiso.com/Documents/TransmissionEconomicAssessmentMethodology-Nov2_2017.pdf.

operating in a vacuum, myopically looking only at one transmission need at a time, and not planning the system holistically. Nothing could be further from the truth. As described above and in prior comments in this proceeding, the CAISO's iterative planning process allows it to consider all the benefits a new transmission project may provide. The CAISO has approved transmission projects that provide multiple types of benefits (*i.e.,* reliability, economic, and public policy), and the CAISO has "upsized" or modified numerous transmission projects to meet multiple reliability contingencies and/or capture other additional benefits.

2. There Is No Need to Mandate Portfolio Planning

The CAISO's annual transmission plan constitutes a holistic assessment of all the needs on the CAISO grid and the projects that will address those needs in the "more efficient or cost-effective manner." In this way, the transmission plan essentially establishes a "portfolio" even though the CAISO does not use the term balanced portfolio in its tariff and approves projects on a project-by-project basis rather than as a portfolio. The Commission should not countenance conclusory claims that sequential review of transmission needs necessarily precludes multi-benefit evaluations or holistic planning assessments. The CAISO's sequential planning approach achieves these objectives without requiring a portfolio approach. In its Final Rule, the Commission should adopt its NOPR proposal that portfolio planning be optional for transmission providers;[32] it should not mandate portfolio planning.

The CAISO is perplexed by suggestions projects must be reviewed and

[32] NOPR at P 71.

approved on a portfolio basis in order to address "the broad range of long-term transmission needs in a cost-effective fashion."[33] As discussed above, a project-by-project review does not mean a transmission provider is examining only one transmission need at a time and is not considering projects that meet multiple needs or provide multiple benefits. For example, consider the example the PIOs provide in their comments. They state that two separate projects that are each designed to reduce congestion on different parts of the transmission system may also provide reliability, public policy, and/or economic benefits that would not exist if only one of the projects was constructed.[34] They suggest the two projects together may create power flows across the system -- creating additional benefits -- that would not be possible if the two projects were evaluated in isolation.

As discussed above, the PIOs wrongfully assume that evaluating transmission solutions on a serial, need-by-need or solution-by-solution basis means that transmission projects are being evaluated in isolation. This simply is not the case in the CAISO. The CAISO's serial evaluation process ultimately allows all of the benefits arising from both projects to be considered, and it enables the CAISO to approve two projects, provided they are the more efficient or cost-effective solution to meet identified needs.

To consider the PIOs example further, assume the CAISO finds the first project is not needed because standing alone it meets no reliability or public policy need, and it

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[33] *See* PIOs Comments at 31.

[34] *Id.* One of the projects in the PIOs' example does not provide net economic benefits sufficient to justify an economically-driven project under a transmission provider's tariff. Otherwise both projects would be approved.

does not provide net economic benefits. The CAISO would next evaluate the economic benefits of the second project and would approve the project because it provides net economic benefits. In evaluating the second project, however, the CAISO necessarily would have to assess its impact on system operations and system flows. As the CAISO has previously indicated, its planning process allows the CAISO can go back and reconsider or modify projects it evaluated previously to account for any additional benefits that are subsequently identified in the planning process. Thus, the CAISO would be able to go back and approve the initial project given the revised flows and benefits created by its operation in conjunction with the second project. The CAISO does not need a "balanced portfolio" approach to accomplish this result.

The CAISO also is concerned that in a portfolio planning process, projects may not be evaluated on their individual merits, creating the potential for transmission planners to approve individual projects that are not the more efficient or cost-effective means of addressing an identified transmission need or do not provide net benefits. Rather, depending on the design of the specific portfolio framework, transmission providers might approve a portfolio of projects that, as a portfolio, provide net benefits, although some projects in the portfolio may not provide net benefits or meet a specific transmission need. The CAISO's approach ensures that every individual project approved in the transmission planning process meets an identified transmission need(s), is the more efficient or cost effective solution for the need(s), and/or provides net benefits. The CAISO's approach leaves no possibility that an individual project that fails to provide net benefits will be approved simply because other projects provide "extra" offsetting benefits.

3. The Commission Should Not Remove Economic Planning (or Public Policy Planning) from Annual Comprehensive Transmission Planning Processes or Make Such Planning Process Subject to the Requirements Applicable to Long-Term Regional Transmission Planning

In its Initial Comments on the NOPR, the CAISO stressed that any Final Rule should not eliminate its ability to approve public policy driven transmission projects in its *annual* comprehensive transmission planning process.[35] The CAISO's Initial Comments demonstrated the need for the CAISO to retain this authority and identified the significant benefits this provides for CAISO customers. The CAISO will not repeat that discussion here. Commenters offer no specific evidence to support depriving the CAISO of this existing authority.

ACEG and ACORE suggest that short-term reliability projects can continue on a "siloed" approach, but they argue that the long-term planning principles should apply to economically driven transmission projects (and longer-term reliability planning).[36] It is unclear whether ACEG and ACORE are seeking to move all economic planning into Long-Term Regional Transmission Planning (*i.e.*, economic planning would no longer

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[35] CAISO Initial Comments on NOPR at 10-20.

[36] Neither commenter defines the timeframe of a short-term reliability project, but both recognize that planning to comply with the NERC reliability standards will need to continue. To comply with NERC Reliability Standard TPL-001-4, the CAISO's annual transmission planning process studies transmission needs over a five-year and a 10-year planning horizon. The NOPR also recognizes that using a 10-year transmission planning horizon for regional transmission planning processes is "consistent with NERC's definition of the Long-Term Transmission Planning Horizon." *See* NOPR at P 94 & n.160. NERC Reliability Standards TPL-001-4, section 2.2, and TPL-001-5.1, section 2.2 each state that "[f]or the Planning Assessment, the Long-Term Transmission Planning Horizon portion of the steady state analysis shall be assessed annually". Presumably, ACEG and ACORE support continuation of annual transmission planning for reliability projects within a 10-year horizon, as required by the NERC Reliability Standards. If not, that would be even more problematic than moving public policy and economic planning into the Long-Term Regional Transmission Planning framework. Reviewing reliability needs in the 6-10-year horizon only every three years, as opposed to annually, would be wholly unworkable and could prevent reliability needs from being identified and resolved in a timely manner.

be considered in annual transmission planning processes) or are merely seeking to apply all of the detailed principles and requirements applicable to Long-Term Regional Transmission Planning to economic planning conducted on an annual basis. The CAISO submits that both options are sub-optimal and problematic and, as such, the Commission should reject them.

The Commission should not preclude transmission providers from considering economically driven transmission needs and solutions in their annual transmission planning processes for the same reasons the CAISO explained why the Commission should not eliminate transmission providers' ability to approve projects driven by public policy needs in the annual comprehensive transmission planning process. Assuming that transmission planners need only plan for economically driven projects every three years or that all economically-driven needs only arise 15-20 years in the future is erroneous. In a rapidly changing electric grid where factors driving market prices are evolving and demand is expected to increase, the ability to approve economically-driven projects annually, particularly smaller and more targeted projects, is important. The CAISO must be able to approve economically-driven projects every year, not every three years. The Final Rule should not preclude or unduly limit that opportunity.

Also, eliminating the CAISO's annual economic assessment would greatly undermine the CAISO's iterative transmission planning process and hinder the CAISO's ability to approve more efficient or cost-effective projects to address all regional needs. The CAISO routinely approves projects that meet multiple types of transmission needs and provide multiple benefits. In other words, economic needs are not decoupled from reliability and public policy needs in the annual planning process. Accordingly, it would

be detrimental to customers to prevent the CAISO from retaining its ability to evaluate economic needs and solutions in its annual planning process (in addition to reliability and public policy needs and solutions). Doing so would preclude the CAISO from designing and approving in its annual transmission planning process more efficient or cost-effective multi-benefit projects that could meet economic needs in addition to reliability needs and/or public policy needs.

To the extent ACEG and ACORE are simply asking the Commission to apply the principles and requirements of the Long-Term Regional Transmission Planning Process to economic planning conducted in an annual transmission planning process, such treatment is unnecessary and would impose significant burdens on transmission providers. As indicated above and in prior pleadings in this docket, the CAISO's annual transmission process already allows the CAISO to undertake holistic transmission planning and evaluate and approve projects with multiple benefit streams. The CAISO also utilizes scenario-based planning that it conducts in close coordination with state agencies. However, the NOPR proposes significant, additional (and detailed), time-consuming requirements for transmission providers regarding the conduct of Long-Term Regional Transmission Planning. Conducting all of the time-consuming steps applicable to Long-Term Regional Transmission Planning every year in the annual transmission planning process is not a reasonable or workable option for evaluating economic projects or public policy projects addressing near-term needs.

C. Support for the NOPR's Specific Attempt to Enhance Coordination Between the Transmission Planning Process and the Generator Interconnection Process Is Misplaced

The Final Rule should not adopt the NOPR's proposal to require transmission providers to consider in their Long-Term Regional Transmission Planning processes regional transmission facilities the transmission provider has identified multiple times in prior generator interconnection process cycles, but that were never constructed due to withdrawal of the underlying interconnection request(s). As the CAISO explained in its Initial Comments, applying the NOPR proposal in the CAISO region would provide no benefits and would not promote more efficient, forward-looking coordination between the transmission planning and generator interconnection processes.[37]

In its comments, the CPUC suggests that the NOPR proposal could improve the CAISO's current practice of considering certain interconnection-related network upgrades in its transmission planning process.[38] The CPUC's comments are misplaced. The CPUC states that compared to the CAISO's LGIP Network Upgrades tariff provision, the NOPR proposal requires (rather than allows) consideration of unbuilt network upgrades not included in an executed generator interconnection agreement at a lower monetary threshold.[39] The CPUC wrongly conflates the two processes and ignores that they have significantly different eligibility requirements, purposes, and impacts. In other words, the two processes are entirely different constructs, and the CPUC's "blurring" of the two processes for comparison purposes does not change this

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37 CAISO Initial Comments at 33-35.

38 CPUC Comments at 27, citing CAISO tariff section 24.4.6.5 – LGIP Network Upgrades.

39 *Id.* at 27.

fact. Thus, the CPUC's suggestion that the NOPR proposal should somehow replace the existing LGIP Network Upgrades tariff provision is fatally flawed. The Commission should not adopt the NOPRs proposed transmission planning and generator interconnection coordination measures.

The NOPR proposal would require transmission providers to consider in their regional transmission planning processes interconnection-related needs for which the transmission provider identified interconnection-related network upgrades in at least two interconnection queue cycles in the last five years that were never constructed because of withdrawal of the underlying interconnection requests.[40] Thus, the NOPR is backwards-facing.[41] The NOPR proposal appears erroneously premised on the conclusion that the costs associated with network upgrade led to the withdrawal,[42] as opposed to the generation developer being unable to secure a power purchase agreement with a load serving entity for its capacity or there simply being no need for the additional generation.

In contrast, the CAISO's LGIP Network Upgrades tariff provision applies to interconnection-related upgrades identified in an open interconnection queue cycle but not yet reflected in an executed interconnection agreement. Consistent with the objective of better coordination between the transmission planning process and the interconnection process, the CAISO may evaluate certain large interconnection-related network upgrades in the transmission planning process to determine whether such infrastructure additions are sized sufficiently to meet the policy goals of the

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40 NOPR at P 166.

41 *Id.* at P 162.

42 *Id.* at P 169.

comprehensive transmission plan. The CAISO may modify or upsize such interconnection-related upgrades in the transmission planning process, or it may identify additional components to accompany such identified interconnection-related upgrades, if the criteria in the tariff are satisfied.[43] Specifically, the CAISO may evaluate for potential modification in the transmission planning process the following interconnection-related network upgrades identified in a Phase II interconnection study if not already reflected in an executed Large Generator Interconnection Agreement: (1) new transmission lines 200 kV or above with capital costs of at least $100 million; (2) a new 500 kV substation with capital costs of at least $100 million; or (3) the network upgrades with capital costs of at least $200 million. Any decision in the transmission planning process to modify the network upgrades identified in the generator interconnection process will not increase the cost responsibility of the interconnection customer as determined in the generator interconnection process.[44]

Thus, unlike the NOPR proposal, the CAISO's LGIP Network Upgrade provision is based on currently-identified interconnection-related network upgrade needs. The CAISO's approach does not look backwards to old interconnection queue cycles and interconnection-related network upgrades that may not even be identified in the most recent interconnection queue cycle. The CAISO's more relevant and forward-looking approach allows the CAISO to evaluate *current interconnection-driven upgrades* that may have a significant impact on the system within the context of the transmission planning process, ultimately allowing the CAISO to identify the most efficient and

43 CAISO tariff section 24.4.6.5.

44 *Id.*

effective network upgrades that are needed.[45] The tariff allows the CAISO to consider and expand these upgrades in the planning process so certain interconnection-related upgrades can be utilized to meet policy-driven or other system needs in addition to meeting the needs of the interconnection customers. This process is efficient because it coordinates with an open (not a closed) interconnection queue process by considering whether currently identified network upgrades can be modified so they also meet additional needs identified in the transmission planning process.

Moreover, the CAISO's approach provides it discretion to consider in the transmission planning process those interconnection-related network upgrades that are the most likely candidates to be sized more efficiently or otherwise be modified based on needs identified in the transmission planning process. Unlike the NOPR proposal, it does not require the CAISO to study in the transmission planning process large numbers of interconnection-related upgrades even if they have no relevance to identified transmission needs and are not realistic candidates for right-sizing. In this regard, the CAISO's approach is measured and balanced, recognizes the burdens that additional study requirements can impose on transmission planners, and targets those interconnection-related upgrades that are most likely to address additional needs or provide additional benefits.

The Commission should neither compare the CAISO's LGIP Network Upgrade provisions with the backwards-looking NOPR proposal, nor require the CAISO to replace those provisions in the Final Rule. The NOPR proposal does not even require

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[45] California Independent System Operator, Revised Transmission Planning Process tariff amendments, Docket No. ER10-1401, transmittal letter at 5-6, 44-49 (June 4, 2010) at pg. 5. The Commission subsequently approved these tariff amendments on December 16, 2010; s*ee California Independent System Operator Corporation,* 133 FERC ¶61,224 at P 92 (2010).

that the interconnection-related network upgrade be identified in the most recent interconnection queue process. Rather, the NOPR proposal could require transmission planners to consider interconnection network upgrades that were only identified in interconnection processes four-to-five years ago and not more recently.

The CAISO continues to believe the NOPR proposal provides no tangible benefits, will not promote productive coordination between the generator interconnection and transmission planning processes, and will place an unnecessary burden on the CAISO and other transmission providers.[46] Indeed, it arguably fails to provide any coordination between the two processes because it could require the transmission planner to study interconnection-related network upgrades that have not even been identified in the three most recent annual interconnection queue cycles. Further, in the CAISO, the generation resources in the interconnection queue far exceed the state's needs over the next decade, and the cluster study process will necessarily identify transmission needs driven by these excessive and unneeded volumes. Transmission planning should focus on current and future expected conditions, not stale conditions. The CPUC's misplaced attempt to draw a correlation between the NOPR proposal and the CAISO's existing LGIP Network Upgrade provision is not a justifiable rationale to adopt the NOPR proposal.

[46] *See* CAISO Initial Comments on NOPR 34.

D. The Final Rule Should Allow Public Utility Transmission Providers to Propose the Just and Reasonable Cost Allocation Method for Long-Term Regional Transmission Facilities After Considering Input from State Entities and Other Interested Stakeholders

The NOPR proposes to require public utility transmission providers in each transmission planning region revise their open access transmission tariffs to include either: (1) a Long-Term Regional Transmission Cost Allocation Method to allocate the costs of Long-Term Regional Transmission Facilities projects, or (2) a State Agreement Process by which one or more relevant state entities may voluntarily agree to a cost allocation method, or (3) a combination of both approaches.[47]

Some California commenters raise significant concerns with any NOPR proposal to mandate a decisional role for state entities in the Final Rule's cost allocation requirements. For example, the Six Cities do not support the Commission's proposals to elevate the role of state entities in transmission project cost allocation decisions, asserting the proposal does not reflect an appropriate oversight role for the states pursuant to the FPA.[48] Under the NOPR proposal, only a single entity for each state would be afforded a decisional role on cost allocation, and commenters assume the CPUC would be the state entity in California.[49] The Six Cities note that municipal utilities are not subject to general regulatory or ratemaking oversight by the CPUC and oppose proposals that could result in state regulators improperly obtaining authority

47 NOPR at P 302.

48 Six Cities Comments at 5-9.

49 NOPR at P 4.

over cost allocation outcomes for customers of self-regulated public power utilities like the Six Cities.[50] Similarly, CMUA, while supporting a role for the states in interregional planning and cost allocation discussions, "would object to state approval processes on cost allocation or siting applied to CMUA members as part of any transmission planning reforms."[51]

The CEC recommends "expanding the definition of *relevant state entities* to include groups that might be affected, either directly or indirectly, by the construction of a transmission project, including disadvantaged communities and Native American tribes."[52]

The concerns raised by municipal entities in California are consistent with concerns raised broadly by public power entities across the U.S. For example, the American Public Power Association (APPA) takes issue with the Commission's proposal to require public utility transmission providers to comply with the determinations of relevant state entities in cost allocation because the APPA believes the proposal is unlikely to be workable and would not result in outcomes that appropriately consider the interests of all stakeholders.[53] APPA also argues that the NOPR proposal raises jurisdictional issues under the FPA.[54]

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50 *Id.* at 9-10.

51 CMUA Comments at 4.

52 CEC Comments at 3.

53 APPA Comments at 39-45. The Large Public Power Council (LPPC) similarly argues that the NOPR proposal is flawed because it fails to include municipal utilities as state entities. LPPC Comments at 36-41.

54 *Id.* at 42.

The CAISO recognizes that state entities make important and necessary contributions to effective regional transmission planning. The CAISO values the critical role the CPUC has regarding transmission projects in the CAISO footprint and has actively coordinated with the CPUC on transmission matters. The CAISO intends to give the views of the CPUC careful consideration as the CAISO fulfills its obligations to develop a cost allocation proposal to comply with the Final Rule in this proceeding. However, the Final Rule should also provide for public utilities like the CAISO to take into account the views of other key stakeholders in developing cost allocation proposals, including the views of municipal utilities, electric cooperatives, and all ratepayers and groups affected by transmission projects.

The potential concerns of giving only a single entity for each state a decisional role on cost allocation are highlighted by the CAISO's particular circumstances, where most PTOs with load are in a single state, but one participating transmission owner/load serving entity is not a California entity. Valley Electric Association, Inc. (VEA), a rural electric distribution cooperative based in Pahrump, Nevada, is a PTO whose load is in Nevada. VEA has expressed concerns about costs for interconnection-related network upgrades being built solely to accommodate California state policies being allocated solely or primarily to VEA's customers. For example, in its reply comments on the ANOPR,[55] VEA contended its customers in Nevada should not be required to pay for all of the upgrade costs to permit connections to VEA's system by "carbon free resources developed within the CAISO, but outside of California, which have a primary purpose of

[55] *Building for the Future Through Electric Regional Transmission Planning & Cost Allocation & Generator Interconnection*, 86 Fed. Reg. 40266 (July 15, 2021), 176 FERC ¶61,024 (2021).

meeting the 100% carbon free resource mandate of California law."[56] This not only raises potential concerns about having a California state entity making decisions on cost allocation issues, it also raises the questions as to who the appropriate entity is to take into account the perspectives of out-of-state PTOs/load serving entities like VEA.

Furthermore, there are serious legal issues with mandating a decisional role for state entities in cost allocation. The CPUC argues the Commission, in the Final Rule, "should require that a grid operator must use its section 205 filing rights to submit the *ex post* cost allocation method (and/or combined method) agreed on by the states . . . ."[57] This position is contrary to the statutory rights granted to public utilities by Congress. The Commission cannot compel a public utility in a particular planning region to relinquish any of its statutory rights under FPA Section 205 to another entity, including a state entity or other non-public utility. FPA Section 205 gives public utilities the absolute right to propose rates and charges for services under Commission jurisdiction, subject only to the Commission's review and determination that such rates and charges are just, reasonable, and not unduly preferential or discriminatory.[58] The Commission exceeds its authority when it "attempts to deprive utilities of their rights 'to initiate rate design changes with respect to services provided by their own assets.'"[59]

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[56] VEA ANOPR Reply Comments at 14 (Nov. 30, 2021).

[57] CPUC Comments at 55-56.

[58] *Atl. City Elec. Co. v. FERC*, 295 F.3d at 9-10 (citing relevant court precedent) (2002) ("*Atlantic City*"); *PJM Interconnection, L.L.C.,* 176 FERC ¶61,053, at P 31 (2021) (stating it is a "well-established statutory principle that the Commission cannot compel a public utility to give up its section 205 rights").

[59] *Atl. City Elec. Co. v. FERC*, 329 F.3d 856, 859 (D.C. Cir. 2003) (quoting *Atlantic City*, 295 F.3d at 10).

In Order No. 1000, the Commission properly recognized it lacks authority to require a public utility to relinquish its FPA Section 205 filing rights in any circumstance. The Commission addressed an argument by a commenter (Columbia Grid) that "with respect to non-RTO regions (where there are no regional service tariff rates), directing public and non-public utilities to adopt a specific cost allocation method in advance could infringe upon a utility's right to propose rates under section 205 of the FPA."[60] The Commission clarified that its directive to adopt a specific cost allocation method did not mean that public utilities had to relinquish their FPA Section 205 filing rights:

> Directing a public utility transmission provider to adopt a specific cost allocation method or methods in advance does not infringe upon a utility's right to propose rates under section 205 of the FPA. It simply requires that rate filings meet certain standards. Columbia Grid cites *Atlantic City* as supporting the contrary position. In that case, the court held that the Commission could not require that the PJM Transmission Owners Agreement be modified to eliminate a provision that allowed a public utility transmission owner to make a unilateral filing to make changes in rate design or terms and conditions of jurisdictional services. The court held that public utilities have an express right under section 205 to make such filings, and the Commission could not require them to relinquish it. *Nothing in this Final Rule [i.e., Order No. 1000] has the effect of disenfranchising any individual or entity of rights under section 205 to make filings.* The Commission regularly establishes standards for filings under section 205, and doing so does not negate any rights under that section.[61]

The Commission upheld these findings in Order Nos. 1000-A and 1000-B,[62] and also "clarif[ied] that the Order No. 1000 interregional cost allocation requirements are not

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60 *Transmission Planning & Cost Allocation by Transmission Owning and Operating Pub.Utils.*, Order No. 1000, 136 FERC ¶61,051, at P 526 (2011) ("Order No. 1000"), *order on reh'g & clarification*, Order No. 1000-A, 139 FERC ¶61,132 ("Order No. 1000-A"), *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶61,044 (2012) ("Order No. 1000-B"), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

61 *Id.* at P 547 (citation omitted) (emphasis added).

62 Order No. 1000-A at PP 589, 649; Order No. 1000-B at P 25.

intended to alter the section 205 rights of transmission owners and RTOs."[63] The Commission was consistent and clear throughout the Order No. 1000 proceeding that its directives did not affect the FPA Section 205 filing rights of ISOs and RTOs or other public utilities. For the same reasons, the Commission should adopt no proposals in this proceeding that require RTOs and ISOs or other public utilities to relinquish their Section 205 filing rights.[64]

The CPUC states its proposal to compel public utilities to make filings on behalf of a state entity is supported by arrangements under which the Southwest Power Pool, Inc.'s ("SPP's) Regional State Committee ("RSC") can require SPP to use its Section 205 rights to file RSC proposals in certain areas, including cost allocation.[65] As the *Atlantic City* court recognized, although the Commission cannot require a public utility to give up its rate filing rights, a public utility can choose to give up those rights voluntarily.[66] This is exactly what happened in SPP. When SPP became an RTO, it voluntarily gave up or conditioned certain of its FPA Section 205 filing rights. The Commission acknowledged this in 2004, finding, "By deciding to proceed with its RTO application, SPP has voluntarily agreed to file with the Commission, pursuant to section 205, certain regional proposals that may be developed by the RSC."[67]

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63 Order No. 1000-A at P 636.

64 APPA similarly argues that any rule that would require public utilities to file particular rates or terms dictated by non-public utility entities raises jurisdictional issues under the FPA. APPA Comments at 42. LPPC also argues that the NOPR framework "appears to involve the unlawful delegation of the Commission's statutory authority." LPPC Comments at 37.

65 CPUC Comments at 55-56 n.201.

66 *Atl. City Elec. Co.*, 295 F.3d at 10 ("Of course, utilities may choose to voluntarily give up, by contract, some of their rate-filing freedom under section 205.").

67 *Southwest Power Pool, Inc.*, 109 FERC ¶61,010, at P 92 (2004).

The CPUC further argues that, if the states cannot agree on a cost allocation methodology for Long-Term Regional Transmission Facilities after a period of a year or longer, there should be no backstop cost allocation method.[68] This position too fails to recognize the statutory rights of public utilities under the FPA. The Commission cannot and should not deprive public utilities of their filing rights to propose a rate design for a project if non-public utility state entities cannot agree on their preferred cost allocation methodology for that project. The Commission's Final Rule should recognize that some regions, including the CAISO, have default *ex ante* cost allocation methodologies that have been very effective in allowing needed transmission projects to be approved, constructed, and placed into service. There is no reason to require regions to depart from this approach.

For sound legal and policy reasons, the Commission should permit public utility transmission providers to propose a cost allocation methodology in compliance with the Final Rule that takes into account the views of state entities and other interested stakeholders and that satisfies the six regional transmission cost allocation principles adopted in Order No. 1000. The CAISO commits to working with all interested parties in developing such a cost allocation approach and will recognize the critical role of state and local regulatory authorities responsible for utility regulation or siting electric transmission facilities.

To the extent the Commission instead mandates a decisional role for state entities in the Final Rule, the CAISO requests that the Commission clarify whether self-

[68] CPUC Comments at 56-58.

regulated public entities will be considered state entities for purposes of implementing these requirements and how VEA's situation should be handled.

E. The Commission Should Not Go Beyond the NOPR's Proposals Regarding Review of Local Transmission Projects in Regional Transmission Planning Processes

1. The Commission Should Not Require the CAISO, or Any Other Transmission Provider, to Review and Approve Maintenance and Asset Management Projects that Cost At Least $3 Million in Its Regional Transmission Planning Process

The CPUC asks the Commission to adopt a new requirement that transmission planners must review in their regional transmission planning processes asset management and maintenance projects that do not expand the capacity of the grid if the estimated cost of such projects is $3 million or more.[69] The CPUC argues that to incentivize utilities to invest in regional transmission, the Commission must eliminate existing perverse incentives for transmission owners to over-invest in utility self-approved projects to circumvent competition.[70]

Before addressing the CPUC's arguments, the CAISO briefly summarizes the Commission-approved the framework in the CAISO region for reviewing expansion/upgrade projects and asset management/maintenance projects. As the CAISO explained in its Initial Comments, the CAISO conducts the transmission planning

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69 CPUC Comments at 107. The CPUC refers to "repairs and replacement projects that do not expand the capacity of the grid, or do so only incidentally, and which are not included in regional transmission planning processes or Order No. 890's transmission planning requirements" as "utility self-approved projects." *Id.* at 106, n. 381.

70 *Id.*

activities for all upgrades and expansions of facilities under its operational control, which include transmission facilities at all voltage levels (both high and low) and at all locations on the system (both regional and within a single PTO's service territory).[71] The CAISO alone determines if there is any need for a transmission upgrade or expansion within a PTO's service territory, and only the CAISO can approve expansion/upgrade projects.

The CAISO does not evaluate, oversee, or approve in its regional transmission planning process transmission maintenance or asset management projects that do not expand the capacity of the grid (other than incidentally). As the CAISO explained in its Initial Comments, the three investor owned utilities in California have Commission-approved asset management processes to evaluate maintenance, repair, and replacement projects that do not expand the grid (except possibly incidentally).[72] In those processes, the PTOs cannot approve any kind of project that expands or upgrades the capacity of the transmission system. PTOs cannot approve transmission upgrades and expansion projects to meet applicable reliability criteria, public policy needs, or economic needs as those categories of transmission are defined in the CAISO tariff. Only the CAISO can approve such projects, which it does through its regional transmission planning process. However, if an asset management or maintenance project can be expanded or modified to address a CAISO-identified transmission need in a local area, the incremental portion of the asset management

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71 CAISO Initial Comments at 47-49. *See also Cal. Public Util. Comm'n, et al. v. Pacific Gas and Elec. Co.*, 164 FERC ¶61,161 at PP 35-37 (2018) (PG&E Complaint Order), *reh'g denied,* 168 FERC ¶61,171 (2019) (PG&E Complaint Rehearing Order). CAISO PTOs cannot approve upgrades or transmission work in their asset management processes that expand (other than incidentally) the capacity of the CAISO grid. System capacity expansions and upgrades can occur only through the CAISO's regional transmission planning process. CAISO Initial Comments at 48-49.

72 CAISO Initial Comments on NOPR at 48-49.

project is subject to review and approval in the CAISO's transmission planning process.[73]

The CPUC ignores the Commission's prior orders rejecting the CPUC's claims that Order No. 890's planning principles apply to maintenance and asset management projects and that the CAISO should be required to require review such projects in its regional transmission planning process.[74] In 2018, the Commission confirmed that transmission-related asset maintenance and compliance activities are not subject to Order No. 890's transmission planning requirements and need not be reviewed in the CAISO's regional transmission planning process. In rejecting the CPUC's FPA Section 206 complaint against PG&E, the Commission found:

> Complainants' assertion that PG&E's TO tariff violates the transmission planning requirements of Order No. 890 is based on the premise that those requirements apply to any transmission-related projects and activities that are capitalized in a PTO's transmission rate base including the asset management projects and activities at issue here. We disagree. While Order No. 890 does not explicitly define the scope of "transmission planning," the Commission adopted the transmission planning requirements of Order No. 890 to remedy opportunities for undue discrimination in *expansion* of the transmission grid. As discussed above, the Commission was concerned that transmission providers may have a disincentive to remedy the increased congestion caused by insufficient transmission capacity, explaining that '[w]e cannot rely on the self-interest of transmission providers to *expand* the grid in a non-discriminatory manner." Thus, the transmission planning reforms that the Commission adopted in Order No. 890 were intended to address concerns regarding undue discrimination in grid expansion. Accordingly, to the extent PG&E's asset management projects and activities do not expand the grid, they do not fall within the scope of Order No. 890, regardless of whether they are capitalized in PG&E's transmission rate base.[75]

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[73] *Id.* at P 69.

[74] PG&E Complaint Order, 164 FERC ¶61,161 at PP 65-72, *reh'g denied,* PG&E Complaint Rehearing Order 168 FERC ¶61,171 at PP 18-59.

[75] PG&E Complaint Order, 164 FERC ¶61,161 at P 66.

Similarly, the order approving SCE's transmission maintenance program, the Commission noted that:

> the Commission adopted the transmission planning requirements in Order No. 890 to remedy opportunities for undue discrimination in *expansion* of the transmission grid…Thus, the transmission planning reforms that the Commission adopted in Order No. 890 were intended to address concerns regarding undue discrimination in grid expansion. Accordingly, to the extent that SoCal Edison's asset management projects and activities do not expand the grid, they do not fall within the scope of Order No. 890.[76]

In the NOPR, the Commission reiterated these earlier findings regarding asset management projects.[77] The only change the NOPR proposes on this topic is to require that transmission planners consider in their regional planning processes facilities operating at 230 kV or above that a transmission owner anticipates replacing in-kind in the next 10 years to see if the facilities can be right-sized.[78] The CPUC offers no compelling reasons why the NOPR proposal is insufficient and why the CAISO and other transmission providers should be required to evaluate all maintenance and asset management projects estimated to cost $3 million or more.

The Final Rule should not adopt the CPUC's proposal. Requiring the CAISO to review and approve all maintenance and asset management projects estimated to cost $3 million or more is unnecessary and highly problematic, and it would impose a significant additional burden on the CAISO without providing any corresponding benefits. It would constitute a dramatic change in the CAISO's role and the framework

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76 *S. Cal. Edison Co.,* 164 FERC ¶61,160 at P 31 (2018).

77 NOPR at P 385, n. 611.

78 NOPR at P 403. The CAISO discusses that specific NOPR proposal in the next section.

that has been in place since CAISO start-up.[79] Requiring the CAISO to undertake this role would fundamentally shift the duties and responsibilities of the CAISO and transmission owners. It would greatly expand the CAISO's scope of activity and require staffing and skill sets well beyond the CAISO's current capabilities. Transmission owners, not the CAISO, oversee maintenance on their respective transmission facilities, and it should remain that way.

The CAISO is not in a position -- and does not have the necessary information or sufficient staff resources with the relevant expertise — to review, assess, and approve annually a large number of transmission maintenance activities in a comprehensive, efficient, and effective manner. The CAISO is neither well-positioned nor well-suited to make these assessments because it is not "on the ground" day-to-day, and it does not constantly monitor and assess the physical condition of the PTO's transmission resources. Unlike transmission owners, the CAISO does not have a physical presence near all parts of the extensive network of transmission facilities that constitute the CAISO grid.

Unlike the CAISO, the PTOs have regional and local offices near their transmission facilities and are better able to collect the relevant information, make informed decisions, and provide information to stakeholders regarding the need for transmission maintenance on their respective facilities. The PTOs can also use their in-depth knowledge of their facilities and their transmission maintenance expertise to

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[79] Under the Commission-approved Transmission Control Agreement ("TCA") between the CAISO and its PTOS, the PTOs are responsible for all maintenance-related activities; the CAISO is responsible for system expansions. *See* TCA Sections 4.3, 6.3, and 11, *see also* PG&E Complaint Order at P 35 (acknowledging the CAISO's explanation of this division of responsibility under the cited TCA provisions). The Commission should not disrupt this longstanding bifurcation of responsibilities that has worked effectively.

manage risks appropriately. The CAISO thus recommends that any processes for review and approval of PTO maintenance and asset management activities should be administered and overseen directly by the PTOs and should not occur in the CAISO's regional transmission planning process. The CAISO can continue to work to coordinate with the PTOs to ensure that any CAISO-approved transmission expansion or reinforcement is aligned with planned maintenance activities, but the Commission should not require the CAISO to review and approve maintenance and asset management projects estimated to cost $3 million or more.

Further, any CAISO review and/or approval of transmission owner maintenance would most likely subject the CAISO to increased liability risk. Requiring the CAISO to review and approve transmission owner maintenance activities would also require a significant increase in CAISO staffing to collect, verify, and analyze the condition of the transmission owners' transmission facilities and their the expected useful life and to prioritize maintenance and replacement activities.

The CPUC fails to identify any utility-approved repair or replacement project that has been imprudent. In any event, as indicated above, the PTOs have Commission-approved asset management processes in place that actively involve stakeholders, allow for information gathering and sharing, and provide transparency regarding asset management and maintenance decisions. If the CPUC objects to a specific decision arising from one of these processes, it can file an FPA Section 206 complaint with the Commission. There is no reason to involve the CAISO in "pure" asset management and maintenance project issues that are not within the CAISO's specific area of responsibility and for which the CAISO has no special expertise or expertise. If a PTO

is considering an asset management or maintenance project in an area of the grid where the CAISO has identified a transmission need, the CAISO already will be aware of the project and will consider whether the project can be modified or expanded to meet the identified transmission need.[80] Under these circumstances, the incremental portion of the asset management project would be subject to the CAISO's regional transmission planning requirements.[81] There is no legitimate need (or tangible benefit) for the CAISO to evaluate and approve asset management and maintenance projects located in a part of the system where there is no identified transmission need simply because the work is expected to cost $3 million or more.

Finally, the CPUC's claim that the current planning framework creates a perverse incentive that encourages incumbent utilities to concentrate transmission investment in local transmission facilities to avoid competition does not apply in the CAISO region. The CPUC fails to account for the fact that in the CAISO, unlike in some other planning regions, PTOs cannot approve transmission expansion projects through their maintenance and asset management processes; the CAISO is solely responsible for approving all transmission system upgrades and expansions to satisfy identified needs on the transmission system.[82] Thus, CAISO PTOs cannot approve transmission upgrades and expansions located entirely within their service territory to "avoid" the CAISO's regional planning process or sidestep any competitive solicitation required by the CAISO tariff. The PTOs can only approve maintenance and asset management

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80 *See* PG&E Complaint Order at P 68.

81 *Id.*

82 *See* CAISO ANOPR Comments at 17; CAISO Initial Comments on NOPR at 47-48; transmittal letter for CAISO Order No. 1000 Compliance Filing at 15; CAISO Comments on Complaint, Docket No. EL17-45-000, at 15-16 (Feb. 22, 2017); PG&E Complaint Order, 164 FERC ¶61,161 at P 10.

projects, and maintenance and asset management projects do not compete with -- and cannot supplant or preclude the construction of – any transmission expansion or upgrade the CAISO finds to be needed in its regional transmission planning process. As such, the PTOs cannot "prioritize" new local transmission projects at the expense of projects the CAISO would otherwise approve in its regional planning process or "divert investment" from regional projects to local transmission expansion.[83] The CAISO alone determines the need for all new transmission expansion projects within a PTO's service territory. Thus, the transmission planning framework in the CAISO region provides no opportunity for individual PTOs to avoid competition by building repair and replacement projects.

In conclusion, the CAISO believes its unique and longstanding approach that bifurcates review and approval of transmission expansion projects from maintenance and asset management projects strikes a reasonable, efficient, and effective balance. It also best reflects the respective capabilities of the CAISO and its transmission owners.

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[83] The CAISO is also concerned the CPUC would have the CAISO review large numbers of maintenance projects intended to maintain existing service levels (*e.g.*, reconductoring) to determine if new transmission lines could be constructed instead just so the project would be subject to competitive solicitation. That is both counterintuitive and unjustifiable. It would add a further layer of review that is unnecessary, costly, and unlikely to produce a different result. The CAISO already evaluates all potential transmission needs on its system and determines whether any transmission upgrades are needed in any part of the transmission system. If transmission upgrades are needed, the CAISO evaluates the transmission and non-transmission solutions needed to address them, which may include modifying a maintenance or asset management project. If the CAISO identifies no transmission need in an area, then there is no compelling reason for the CAISO to review annually the thousands of maintenance projects primarily intended to maintain service to customers. The significant additional workload this would create would require the CAISO to increase its staffing levels significantly. Adding a layer of CAISO review above and beyond the transmission owner review would further delay project approvals. In most instances, building a brand new greenfield transmission line would be significantly more costly than reconductoring and maintenance activities. Also, it would have greater environmental impacts, which is problematic because the requisite environmental review will require identification and consideration of less environmentally impactful alternatives. Under these circumstances, any desire to transform mere maintenance projects into greenfield transmission projects just so they can be subject to competitive solicitation is misplaced.

Transmission owners have no ability to approve expansion projects and thus cannot evade regional planning and applicable competitive transmission processes, discriminate against non-incumbents, favor maintenance projects over expansion projects, or undermine efforts to build-out the grid to meet climate goals. Also, the transmission owners provide considerable transparency to the CAISO and stakeholders regarding their capital maintenance programs. Accordingly, the Commission should reject the CPUC's proposal to require the CAISO and other transmission planners to review and approve all non-expansion, maintenance and asset management projects costing $3 million or more in regional transmission planning processes.

2. The CAISO Does Not Oppose the Commission's Proposal on Who Would Build Right-Sized Projects to the Extent It Can Be Implemented Consistent, with and Not Unduly Disrupt, Existing Regional Transmission Planning Processes

The NOPR proposed, as part of each Long-Term Regional Transmission Planning cycle, that public utility transmission providers evaluate whether transmission facilities operating at or above 230 kV that a transmission provider anticipates replacing in-kind with a new transmission facility during the next 10 years can be "right-sized" to more efficiently or cost-effectively address regional transmission needs. The Commission explained that right-sizing means the process of modifying a transmission provider's in-kind replacement of an existing transmission facility to increase that facility's transfer capability.[84] For any right-sized replacement transmission facility selected in the regional transmission plan for purposes of cost allocation to meet

[84] NOPR at P 403. The Commission stated that right-sizing could include, for example, increasing the transmission facility's voltage level, adding circuits to the towers (*e.g.*, redesigning a single-circuit line as a double-circuit line), or incorporating advanced technologies (*e.g.*, advanced conductor technologies). *Id.*

transmission needs identified through Long-Term Regional Transmission Planning, the Commission also proposes to require establishment of a ROFR for the transmission provider that included the in-kind replacement transmission facility in its in-kind replacement estimates, which would extend to any portion of such a transmission facility located within the applicable transmission provider's retail distribution service territory or footprint.[85]

The CAISO did not specifically address the proposed ROFR for right-sized local transmission projects in its Initial Comments. However, the CAISO explained that the Final Rule in this proceeding should not unduly disrupt existing transmission planning processes such as the CAISO's, which already evaluate both local and regional transmission expansion needs and solutions in a single, integrated regional transmission planning process and identify potential opportunities to right-size replacement transmission facilities.[86] Other parties submitted initial comments either supporting[87] or opposing[88] the proposed ROFR for right-sized projects.

The CAISO does not oppose implementing the proposed ROFR for right-sized projects, provided the Commission ensures in the Final Rule that this ROFR will not

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[85] NOPR at P 409. The Commission stated that in-kind replacement estimates mean a list of each existing transmission facility operating at or above 230 kV that the transmission provider owns and that it estimates may need to be replaced with a new in-kind transmission facility over the next 10 years, starting from the point in the transmission planning cycle when the list is compiled. *Id.* at P 404. The CAISO uses the term Right-Sizing ROFR in these reply comments; the NOPR does not use that specific term.

[86] CAISO Initial Comments at 46-51.

[87] *See, e.g.*, American Electric Power Service Corporation Comments at 46-47; Edison Electric Institute Comments at 41; MISO Transmission Owners Comments at 27-28.

[88] *See, e.g.*, SWP Comments at 8-9; Initial CPUC Comments at 115-17; Electricity Transmission Competition Coalition Comments at 62-70.

unduly disrupt the CAISO's or any other transmission provider's existing integrated regional transmission planning processes.

As explained in its Initial Comments, the CAISO's transmission planning process includes three phases: (1) developing unified planning assumptions and a study plan; (2) identifying reliability, economic, and public policy needs and solutions to meet those needs, and (3) conducting competitive solicitations for applicable projects. The CAISO conducts the transmission planning activities for all upgrades and expansions of facilities under its operational control, which include transmission facilities at all voltage levels and at all locations on the system, and the CAISO evaluates all local and regional transmission needs and solutions holistically through this integrated regional transmission planning process. PTOs in the CAISO can only approve projects that are solely for transmission maintenance and asset management and that do not expand the capacity of an existing transmission facility.[89] As discussed above, the Commission should not undo or unduly disrupt this allocation of responsibilities between transmission owners and the CAISO.

In the CAISO and other such planning regions, transmission planning to address regional needs identified through the planning process should continue to be performed using the existing processes. In the CAISO, new greenfield transmission facilities below 200 kV located entirely within a single PTOs service territory are subject to a ROFR; new greenfield transmission projects at 200 kV and above are subject to competitive solicitation, as are lower voltage facilities that extend beyond a single PTO's footprint. Under the CASO tariff, the following types of transmission work are

[89] CAISO Comments at 41, 47-49.

also subject to a ROFR: "an upgrade or improvement to, addition to, or a replacement of a part of an existing an existing Participating Transmission Owner facility."[90]

The examples of right-sizing the NOPR identifies clearly constitute upgrades, improvements, or additions to, or replacements of a part of, an existing facility and, as such, they should be subject to a ROFR, consistent with Order No. 1000. If the CAISO reviews a 230 kV transmission line the transmission owner anticipates replacing in the next ten years and determines that the line should be replaced in-kind, that would be subject to a ROFR because it would continue to be a "pure" asset management or maintenance project that does not increase the capacity of the system. This is consistent with the Commission's prior orders (discussed above) regarding the treatment of asset management projects in the CAISO footprint.

If the CAISO determines that the existing 230 kV transmission line should be replaced in its entirety with a higher voltage line between the same interconnection points (*i.e.,* every tower, line, and piece of equipment associated with the existing line must be replaced), it is reasonable that such replacement facility also be subject to a ROFR. Under these circumstances, the PTO is essentially replacing its existing line with a higher capacity line within the same general footprint and at the same points of interconnection. The mere fact the replacement line will have a higher voltage should not subject the replacement line to a ROFR.[91] This is consistent with the CAISO's

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[90] CAISO tariff section 24.5.1. The Commission found this provision was consistent with Order No. 1000. *Cal. Indep. Sys. Operator Corp.,* 143 FERC ¶61,057 at PP 118, 120 (2013), *order on clarification and compliance*, 146 FERC ¶61,198 at P 42 (2014).

[91] The CAISO may even direct facilities to be built that can accommodate expanded operations or higher voltages in the future when expected conditions actually materialize.

treatment of upgrades of, modifications to, or additional components added to an interconnection-related upgrade reviewed and approved in the CAISO's transmission planning process under the LGIP Network Upgrade tariff provisions (discussed above). The PTO has a ROFR to build such additional components and/or the upgraded line.[92] On the other hand, if instead of replacing an existing 230 kV line that is expected to retire, the CAISO approves construction an entirely new and different 500 kV transmission line where none has existed before, *i.e.*, a new line that would connect to different points on the transmission system than the line being retired and that presumably meet other needs beyond those met by the existing line, such new line would be subject to competitive solicitation under existing CAISO tariff provisions.

F. Transmission Oversight

1. The Commission Should Reject Proposals to Require RTOs/ISOs to Hire Independent Transmission Monitors

In response to the NOPR, several commenters recommend roles for independent transmission monitors. The National Association of State Utility Consumer Advocates (NASUCA) argues consumers and the Commission need to know that transmission planners have explored all cost-beneficial options and utilized adequate and transparent inputs in the planning process.[93] The CPUC suggests the Commission should provide a role for independent transmission monitors to consider grid enhancing technologies in transmission planning processes.[94] ACORE supports establishing an independent

92 CAISO tariff section 24.4.6.5.

93 NASUCA Comments at 6-7.

94 CPUC Comments at 49.

transmission monitor that can assist with identifying best practices and ensure transparency in the planning process and supporting analyses.[95] Other commenters encourage the Commission to establish these monitors to ensure that all aspects of transmission planning occurs in a transparent and nondiscriminatory manner, ensure that developers meet the conditions set forth in their competitive proposals, and coordinate with RTO/ISO market monitors.[96] The WPIOs recommend that the Western Electricity Coordinating Council perform the role of independent transmission monitor in the Western Interconnection.[97]

The CAISO opposes recommendations to establish, or assign responsibilities to, an independent transmission monitor as part of any Final Rule. The NOPR did not propose to establish or assign responsibilities to an independent transmission monitor. To adopt a rule requiring independent transmission monitors, the Commission should first issue a proposed rule seeking to impose such a requirement and then accept comment on that specific rule. In RTO/ISO regions, transmission planning already occurs in a transparent, independent, and non-discriminatory manner. Independent transmission monitors would duplicate work the Commission and states are already performing or could perform. Unlike market monitors within RTO/ISO regions, an independent transmission monitor would duplicate work the CAISO already performs. Requiring all RTOs/ISOs to establish an independent transmission monitor makes little sense. In the case of the CAISO, there is insufficient record evidence to support even a

95 ACORE Comments at 14-15.

96 WPIOs Comments at 35-36. ELCON Comments at 26; ETTC Comments at 16, 23-24.

97 WPIOs Comments at 35-36.

preliminary finding that the CAISO's transmission planning process requires an independent transmission monitor to remain just and reasonable.

a. The NOPR did not Propose to Establish or Assign Roles to Independent Transmission Monitor

The Commission should not adopt as part of a Final Rule in this proceeding any requirement to establish an independent transmission monitor or assign roles for such a function. The NOPR does not propose to establish an independent transmission monitor, and the NOPR makes no preliminary findings that transmission rates or practices are unjust, unreasonable, or unduly discriminatory without the function of an independent transmission monitor. Further, the concept of an independent transmission monitor is quite different from the specific proposals in the NOPR, and adopting an independent transmission monitor requirement would constitute far more than a mere modification to a NOPR proposal. It is an entirely different concept that should not be pursued without first taking the steps explicitly to propose an independent monitor requirement and seek comments on such specific proposal.

If the Commission proposes to adopt an independent transmission monitor requirement, it should do so in a separate notice of proposed rulemaking. Any such proposal should clearly identify the need for such a reform, the functional role of an independent transmission monitor, how that role will address the specific need for reform, and how to allocate the costs of an independent transmission monitor. None of these matters are discussed in this NOPR. As explained below, the Commission should

not propose to establish an independent transmission monitor in the CAISO's planning region.

b. The CAISO's Transmission Planning Process Is Open and Transparent

As the CAISO has previously explained in this docket, the planning work the CAISO performs occurs through a transparent process, and the CAISO fully vets input assumptions and a study plan with stakeholders. The CAISO's transmission planning process incorporates demand forecasts developed in coordination with the CEC that reflects established energy policies. The CAISO works with the CPUC and stakeholders to incorporate CPUC-developed resource portfolios into its transmission planning process to inform the need for transmission upgrades or additions. Review of these inputs by an independent transmission monitor would likely provide no meaningful purpose. Indeed, the states, not the Commission, are responsible for determining what specific resources their load serving entities procure. At the outset of its transmission planning process, the CAISO presents a draft study plan to stakeholders and accepts comments before finalizing this plan. An independent transmission monitor would provide no greater transparency to stakeholders or transmission customers into the CAISO study plan. Similarly, the CAISO explains the results of its studies, which capital projects it approves, and which capital projects it does not approve. The CAISO makes the study results available to stakeholders, including modeling work performed by the

CAISO. An independent transmission monitor would not increase the transparency of the CAISO's transmission plan.

No party argues or demonstrates that the CAISO's planning process is insufficiently open and transparent or that the CAISO has made biased decisions. The CAISO's existing process allows all stakeholders to provide input and review the results of the CAISO's transmission plan in a manner that ensures the CAISO considers the cost of approved transmission projects. The CAISO also considers alternatives when assessing the need for transmission projects, including non-wires alternatives. The CAISO has approved non-wires solutions in its transmission planning process.

Additionally, the CAISO tariff-based competitive solicitation process has resulted in approved project sponsor agreements with both incumbent and non-incumbent entities. The process is highly competitive. The CAISO has selected project sponsors from competing applicants in 11 competitive solicitations and has awarded six projects to independent transmission developers, two projects to incumbent PTOs, two projects to collaborations between incumbent PTOs and independent developers, and one project to a public power entity that was not an existing PTO. The CAISO's reassessment of transmission needs through its annual planning process has also resulted in the cancellation of some transmission projects when resource development and reductions in load forecasts addressed the identified need. The CAISO also has been transparent regarding the total costs of transmission approved through its transmission planning process.[98] In its transmission plan, the CAISO estimates the impact of the capital projects identified in the CAISO's annual transmission planning

[98] *See, e.g.,* CAISO 2020-2021 Transmission Plan at 443-45.

processes on its High Voltage Transmission Access Charge. As part of this effort, the CAISO forecasts the High Voltage Transmission Access Charge trend over the period covered by the transmission plan. The CAISO has made its model to complete this cost estimate available to stakeholders and will continue to update and enhance the model. Based on the foregoing, there is no basis to impose an independent transmission monitor on the CAISO.

No commenter identifies specific examples of undue discrimination or tariff violations by the CAISO. In Order No. 890, the Commission declined to require use of an independent third-party transmission coordinator.[99] The Commission recognized it was possible to comply with the principles of Order No. 890 without requiring use of an independent third-party.[100] To support this conclusion, the Commission noted:

> We expect the transmission plans themselves to be developed under an open process that includes coordination among each transmission provider, its customers, other stakeholders, and its neighbors. A transmission provider will need to demonstrate to us in a compliance filing that the plan meets the principles, including providing a dispute resolution process. We believe that an open, transparent planning process, with meaningful coordination and dispute resolution, will provide a sufficient basis for customers to identify and raise meaningful concerns if a plan does not treat similarly-situated customers in a comparable manner, where planning appears to be conducted in a discriminatory manner, or in other instances where the independence of planning may be in question. If disputes do arise in these areas and cannot be resolved consensually, we are available to either encourage a consensual resolution … or resolve them ourselves if a complaint is filed.[101]

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99 *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890 at P 567, FERC Stats. & Regs. ¶31,241, (Order No. 890), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007) (Order No. 890-A), *order on reh'g*, Order No. 890-B, 123 FERC ¶61,299 (2008) (Order No. 890-B), *order on reh'g*, Order No. 890-C, 126 FERC ¶61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶61,126 (2009).

100 *Id.* at P 568.

101 *Id.*

The same reasons that led the Commission to reject the concept of an independent third-party transmission monitor in Order No. 890 continue today. If a particular transmission provider is not following the requirements of Commission Order Nos. 890 and 1000, the Commission should take appropriate action vis-à-vis that specific transmission provider. It need not impose an independent transmission monitor requirement on every transmission planner.

c. The Commission and Stakeholders Can Perform the Proposed Functions of an Independent Transmission Monitor

The Commission and stakeholders can effectively perform the functions commenters suggest for independent transmission monitors. Assessing the prudency of selected projects compared to alternative projects, fall squarely within the oversight functions the Commission exercises over planning entities. The CAISO does not oppose scrutiny of its transmission planning process and welcomes proposals to enhance that process. However, requiring an independent transmission monitor is unnecessary and problematic. It would duplicate work already performed by the CAISO, disrupt and add uncertainty to the transmission planning process, and create potential delays. Stakeholders can raise any concerns directly with the CAISO or with the Commission. The Commission has ample authority to request information from transmission planners, audit whether transmission planning processes adhere to existing rules or regulations, or initiate and/or entertain section 206 proceedings regarding public utility transmission planning processes. There is no need to create an additional layer of monitoring. If needed, the Commission can hire employees and consultants to help it address these questions.

In addition, many of the proposed functions for an independent transmission monitor involve monitoring and reporting that the CAISO already does in its transmission planning process. The CAISO makes all planning process information and models available, allowing stakeholders to conduct their own modeling and analyses to assess transmission needs and solutions. This collaborative process helps the CAISO develop an annual transmission plan that identifies the most cost effective solution whether that is a wires or non-wires solution. The CAISO also runs scenario analyses based on stakeholder feedback and provides the results to stakeholders. The CAISO provides planning cost estimates for new transmission projects in the transmission planning process and in its functional specifications for competitive solicitations. The CAISO also monitors the need for transmission projects it has approved in previous planning cycles on a case-by-case basis when warranted by circumstances. The CAISO has canceled many projects -- including projects awarded in competitive solicitations – that it subsequently determined were no longer needed. The CAISO also has implemented several reforms to its competitive solicitation process since its inception, including submitting tariff amendments and improving its project sponsor selection report. For example, after completing its two most recent competitive solicitation processes, the CAISO undertook a “lessons learned” effort to assess what improvements it could make to the competitive solicitation application and templates it uses. Given the access to information in the CAISO’s transmission planning process, there is no need to house a new office within the CAISO to perform these functions.

d. Unlike Independent Market Monitors, an Independent Transmission Monitor Would Duplicate Work Within the CAISO Planning Region

The Commission should not equate proposals for independent transmission monitors with existing market monitors in RTO/ISO regions. In contrast to wholesale electricity markets that involve multiple markets, numerous market participants submitting day-ahead and real-time bids and schedules, complex inputs, algorithms, and market results, the CAISO transmission planning process is significantly more straightforward and transparent. The Commission established independent market monitors in part because RTO/ISO markets are operationally complex and the Commission determined a need existed to evaluate market participant behavior in these markets.[102] There is no comparable market participant behavior or market manipulation or gaming to monitor in the transmission planning process. Only the transmission planner is making decisions.

The CAISO provides information to stakeholders and explains it throughout the entire process. The CAISO explains its decisions in the final transmission plan adopted by the CAISO's Board of Governors and in the competitive solicitation decisional reports it issues. The CAISO develops its study plan, identifies input assumptions, and explains the results of its planning studies through processes open to the public. In its transmission plan, the CAISO also estimates the impact of the capital projects identified in the annual transmission planning processes on its High Voltage Transmission Access Charge. The CAISO makes its underlying modeling available to stakeholders. The

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[102] *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators,* 111 FERC ¶61,267 (2005) at P 3.

CAISO's competitive solicitation process assesses bids to build specific transmission projects, but this process involves a few bids for a specific project. This is a far cry from the massive volume of information in the CAISO energy and ancillary services markets for which a market monitor can shed light on market outcomes and market participant behavior. The CAISO's competitive solicitation designation reports summarize the information from every applicant, and describe the cost and cost containment measures of the winning bidder. Based on prior Commission decisions, the CAISO does not post the cost containment information of bidders that do not receive a competitive solicitation award, but in a prior technical conference proceeding, the CAISO requested that the Commission rule that such material can be made public.[103] No entity has filed a complaint against the CAISO regarding the results of a competitive solicitation.

The CAISO already undertakes identified functions of a transmission monitor through an open stakeholder discussion when it develops its transmission study plan. Further, the CAISO provides sufficient information and tools for stakeholders to run their own sensitivity studies and make adjustments to the CAISO's studies. Overlaying an independent transmission monitor to second guess the outcomes of this stakeholder process duplicates work and is unnecessary.

[103] CAISO Comments on Technical Conference, Docket No. AD16-18, pp. 2-3 (Oct. 3, 2016).

G. The Commission Should Not Expand the Requirements for Competitive Solicitation Processes in this Proceeding

1. The Commission Should Not Require That All New Transmission Facilities 100 kV and Above Be Subject to Competitive Solicitation

In Order No. 1000, the Commission eliminated the federal ROFR for an incumbent transmission provider for all transmission facilities selected in a regional transmission plan for regional cost allocation.[104] However, the Commission did not eliminate the ROFR for local transmission facilities whose costs are not allocated regionally. Order No. 1000 defined a local transmission facility as "a transmission facility located solely within a pubic utility's service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation."[105] The CAISO's implementation of Order No. 1000 eliminated the ROFR for (1) all new regional transmission facilities, defined as facilities 200 kV and above (even if they are located solely within the footprint or service territory of a PTO), and (2) all new transmission facilities regardless of voltage that span two (or more) PTO systems or span the CAISO BAA and another BAA. Consistent with Order No. 1000, a ROFR applies to upgrades

104 Order No. 1000 at P 313.

105 *Id.* at PP 63, 318.

or improvements to, additions on, and replacements of, a part of an existing PTO facility.[106]

Several commenters urge the Commission to adopt reforms to require more transmission projects be procured through competitive solicitation processes. The SWP requests that the Commission expand the CAISO's competitive solicitation process to projects below 200 kV located entirely within a single PTOs service territory (*i.e.*, local transmission projects) and to upgrades of existing transmission facilities.[107] SWP encourages the Commission to "delink" project eligibility for competition for new projects from cost allocation.[108] LS Power Grid, LLC (LS Power) and ETCC recommend the Commission expand competitive transmission requirements and make new-build transmission projects above 100 kV subject to competitive solicitation.[109] ETCC also suggests that network upgrades arising from the generator interconnection process should be subject to competition.[110] LS Power and ETCC argue that transmission facilities operating at 100 kV or higher are regional facilities and provide regional benefits and, thus, should be subject to competitive processes.[111] LS Power and ETCC state that facilities above 100 kV are part of the bulk electric system under the NERC standards and can affect the reliable operation of the interconnected transmission system.[112]

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106 CAISO tariff section 24.5.1; *see* Order No. 1000 at P 319.

107 SWP Comments at 16.

108 *Id.*

109 LS Power Comments at 136-41; ETCC Comments at 16-19.

110 ETCC Comments at 18.

111 *Id*. at 17-18; LS Power Comments at 138.

112 LS Power Comments at 138-39; ETCC Comments at 17-18.

The CAISO has long been a proponent of competitive solicitation processes for regional transmission facilities. The CAISO implemented competitive solicitations for regional economic- and public policy-driven transmission projects before the Commission issued Order No. 1000.[113] The CAISO has awarded many regional transmission projects to independent transmission developers. For the reasons explained below, however, the CAISO does not support commenters' proposal to make transmission projects between 100 kV and 200 kV subject to competitive solicitation.

The CAISO's competitive solicitation framework ensures projects providing regional benefits are subject to competition, properly aligns competitive solicitation with cost allocation, and effectively balances the objectives and burdens of conducting competitive solicitations. Commenters seeking to eliminate or establish lower minimum voltage thresholds for competitive solicitation eligibility ignore that the CAISO's competitive solicitation framework already is more robust than what Order No. 1000 requires. Under Order No. 1000, transmission facilities located entirely within a single transmission owner's service territory – regardless of voltage level -- are exempt from competitive processes unless the transmission owner seeks regional cost allocation for the facility. However, the CAISO does not provide its PTOs the choice allowed under Order No 1000 – all new transmission facilities above 200 kV are automatically subject to regional cost allocation and subject to competitive solicitation even if they are located entirely within a single PTO's service territory.[114]

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113 *Cal. Indep. Sys. Operator Corp.,* 133 FERC ¶61,224 (2010).

114 Further, transmission facilities below 200 kV are subject to competitive solicitation if they extend between the CAISO BAA and another BAA or between two PTOs.

a. There Is No Basis to Find All New-Build Transmission Projects Down to 100 kV Are Regional Transmission Facilities on the CAISO System

There is no factual basis for the broad-based claim that every transmission facility 100 kV and above on every transmission system in the country is a regional facility and provides regional benefits. As the CAISO explained in its Order No. 1000 compliance filing, on the CAISO grid transmission facilities 200 kV (high-voltage transmission lines) and above approved in the transmission planning process provide regional benefits, but facilities below 200 kV (low- voltage transmission lines) are local in nature.[115] The CAISO reiterated this fact when describing the difference between regional and local facilities on the CAISO grid in its Comments on the ANOPR:

> The CAISO's transmission cost allocation scheme recognizes that the high voltage transmission lines on the CAISO grid perform a backbone function that supports regional flows of bulk energy throughout the system; whereas, the lower voltage facilities are essentially local facilities designed (1) to deliver energy already transmitted over the high voltage lines to local customers in load pockets, or (2) to deliver energy from smaller-scale, individual generating units used to serve local areas. The high voltage facilities support the attachment and delivery of bulk energy throughout the system. They also enable the CAISO to maintain reliability on the overall system, support the import and export of power, provide access to remote resource areas, and facilitate reserve sharing among load serving entities.[116]

The CAISO's Order No. 1000 Compliance Filing described how facilities below 200 kV in each of the PTO service territories (*i.e.*, PG&E, SCE, and SDG&E) are configured

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[115] Transmittal letter for CAISO Order No. 1000 Compliance Filing at 23-30 and Prepared Testimony of Neil Millar, Docket No. ER13-103-000 (Oct. 11, 2012). *See also* CAISO ANOPR Reply Comments at 66-69, available at Microsoft Word - RM21-17_CAISO_ReplyComments_20211130

[116] CAISO ANOPR Comments at 74 available at Microsoft Word - ANOPR_Comments (caiso.com)

and operated to provide a local function, not a regional function.[117] The CAISO stated that "[a]lthough there could be instances in which a low-voltage transmission facility provides some regional benefits, the [CA]ISO does not view this as anything more than a rare occurrence in light of the configuration and operation of the [CA]ISO grid and expected future conditions and need."[118] The CAISO will not repeat that discussion here.

The CAISO also notes the legislation that created the CAISO -- California Assembly Bill 1890 – directed the development of a new transmission access charge and, subject to any necessary Commission approvals, established a default methodology (in the event CAISO Governing Board action did not develop an alternative approach) consisting of a uniform "regional" transmission access charge and a utility-specific "local" access charge. The default methodology in the statute defined regional transmission as facilities operating at 230 kV and above and local transmission as facilities operating below 230 kV.[119] To implement the legislation, the CAISO worked with stakeholders for over two years to model and evaluate extensive data. The result is reflected in the CAISO's demarcation of regional transmission facilities (200 kV and above) and local transmission facilities (below 200 kV).[120]

Commenters seeking to impose the 100 kV requirement on all planning regions, including the CAISO, ignore the CAISO's enabling legislation, the CAISO's prior filings and testimony, and the actual configuration and operation of the CAISO grid. They offer

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117 Transmittal letter for CAISO Order No. 1000 Compliance Filing at 26-28 and Prepared Testimony of Neil Millar at 3-7.

118 Transmittal Letter for CAISO Order No. 1000 Compliance Filing at 29-30.

119 Cal. Pub. Util. Code § 9600(a)(2)(c).

120 Transmittal Letter for CAISO Order No. 1000 Compliance Filing at 24.

no CAISO-specific evidence to demonstrate that all transmission facilities 100 kV and above and located entirely within a single CAISO PTO's service territory are regional transmission facilities providing regional benefits. Conclusory and general claims cannot convert local CAISO transmission facilities into regional facilities.

Further, the mere fact a 100 kV facility is interconnected to, or integrated with, the remainder of the transmission system is irrelevant. That fact alone does not make a transmission facility a regional facility or mean the facility provides regional benefits. If that were the "test", every transmission facility – not just those 100 kV and above -- would automatically be deemed regional and would be deemed to provide regional benefits. That is not the case. The fact a 100 kV transmission facility can affect reliability does not mean it provides more than *de minimis* regional benefits to customers beyond a single transmission owner's footprint. These are two entirely different considerations. If a 100 kV facility is out of service or derated, it can affect other parts of the integrated system because electricity must be diverted elsewhere. However, that does not mean the specific facility is providing regional benefits.

Finally, the CAISO is concerned about the potentially far-reaching implications of comments that facilities down to 100 kV provide regional benefits and constitute regional facilities eligible for competitive solicitation, but the costs of such facilities do not have to be allocated regionally. Commenters fail to explain how a transmission facility can "arguably" provide regional benefits and be a regional facility for competitive solicitation purposes, but not for cost allocation. The Commission should not adopt proposals that create greater uncertainty and could prompt litigation as parties take their chances to seek to undo longstanding, well-functioning cost allocation methodologies

and effectuate dramatic cost shifts across regions. This would be contrary to Commission findings in the Order No. 1000 rulemaking that link cost allocation to the ability of incumbent transmission owners to satisfy their obligations. In that proceeding, the Commission recognized that incumbent transmission providers may have reliability needs or service obligations and held that Order No. 1000 did not harm the ability of an incumbent transmission provider to meet its reliability needs or service obligations because the incumbent could choose to build new transmission facilities that are located solely within its retail distribution service territory or footprint whose costs are allocated only to the customers of that transmission provider.[121]

b. Commenters Fail To Address the Implications of Making Local Transmission Facilities Subject to Competitive Procurement

Commenters arguing the Commission should mandate competitive procurement for local transmission projects focus on the link between cost allocation and competitive procurement, but they ignore the other component of the "equation" articulated in Order No. 1000, *i.e.*, the fact the Commission recognized transmission providers were generally responsible for building local transmission facilities to meet reliability needs and service obligations within their own retail distribution service territory or footprint.[122] The Court of Appeals for the D.C. Circuit, in upholding Order No. 1000, relied in part upon the fact that Order No. 1000, *et seq.,* sought to minimize potential reliability harms

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[121] *See* Order No. 1000 at P 262; Order No. 1000-A at P 425.

[122] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub.Utils.*, Order No. 1000, 136 FERC ¶61,051, FERC Stats. & Regs. ¶31,323, at PP 318, 329 (2011), *order on reh'g and clarification*, 139 FERC ¶61,132 at PP 366, 368,379, 382, 392, 416-30 (Order No. 1000-A) (2012), *order on reh'g and clarification*, 141 FERC ¶61,044 (Order No. 1000-B) (2012), *aff'd.*, *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

to incumbents "by limiting the [ROFR] ban's scope, permitting incumbents to retain rights of first refusal for upgrades to their existing transmission facilities and for 'local' facilities."[123]

Local transmission facilities directly affect service to the transmission providers' retail and wholesale customers. No commenter discusses the possible implications of other developers constructing and operating transmission facilities on the local transmission system, including facilities needed to meet the transmission owner's local service obligations and to ensure local system reliability.

The CAISO's experience shows there can be much greater complexity in developing projects and obtaining permits on the lower-voltage transmission system than the high-voltage transmission system because the CAISO's lower-voltage transmission system is much more integrated with existing transmission owners' distribution systems. Also, the distribution system is much more dynamic and has a much shorter planning horizon because the distribution system must be upgraded and reconfigured more frequently to address distribution system connections. Although the high-voltage system interconnects with distribution facilities in some locations, the lower-voltage system has extensive interconnections to the distribution system and is much more integrated with the distribution system. Conditions on the distribution system can more directly affect the low-voltage transmission system and vice-versa. Operating and maintaining these lower-voltage facilities thus requires greater coordination between the transmission and distribution systems. Opening the local transmission system to competition could cause a proliferation of transmission owners

[123] *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 at 79 (D.C. Cir. 2014).

operating bits and pieces of an otherwise single, integrated local system that intersects with the transmission owner's distribution system. Such a patchwork arrangement raises potential coordination issues and fragments the local system by increasing seams within an individual utility's transmission and distribution systems, while providing less opportunity for cost savings than high-voltage, regional projects due to the relatively lower capital costs associated with low-voltage, local projects. No comments address these coordination issues.

The CAISO's Estrella 230/70 kV substation project provides an example of how the complexities of distribution system issues, coupled with transmission system issues, can make competitive procurement processes problematic even when there is a supportive PTO. The CAISO approved the Estrella project in 2014 to address two sets of concerns -- the risk of thermal overloads and voltage concerns on the 70 kV system during contingency conditions on the 70 kV system and potential contingency conditions on the 230 kV system. The CAISO Board of Governors approved the project in March 2014, the CAISO completed the competitive solicitation process in March 2015, and the proponents submitted the environmental assessment in January 2017. The target in-service date was May 2019. The competitive part of the Estrella project involved constructing a new 230/70 kV substation and related work. The non-competitive part of the project involved installing a 45 MVA 230/12 kV distribution transformer and related work. The combined project contemplated two yards at the substation – a transmission yard and a distribution yard for the PG&E distribution facilities.

The Estrella facilities subject to competitive solicitation were at the intersection of the transmission and distribution systems, and the environmental review process delved deeply into distribution system-related issues and examined alternative distribution-level alternative solutions. It also created significant coordination issues between the transmission component of the project and the distribution component of the project.

The project has involved a lengthy and complex environmental review process. There have been five rounds of deficiency letters and six rounds of data requests in that review process. There has been extensive discussion of the potential for storage to meet all or part of the distribution and/or transmission system reliability needs. Depending on the options to meet distribution system needs, other alternatives for meeting the transmission system need were then raised, *e.g.*, upgrading existing substations rather than developing a new injection point into the 70 kV distribution system (which was the aim of the competitively procured project).

The Estrella experience highlights the challenges in the permitting process associated with awarding a project to a non-incumbent transmission developer when the permitting process raises distribution-related issues and issues about upgrading existing facilities, and puts most of the burden on rationalizing the need for the project and the acceptability of various alternatives (including distribution alternatives and upgrades to existing facilities), on the incumbent transmission owner. This experience highlighted the complexities of moving forward with an integrated solution that directly affects, and is affected by, distribution system planning, and that also requires exploring a host of alternatives in the permitting process that may not involve the competitively awarded solution ultimately moving forward. Given the dependence on the incumbent

utility to address the distribution-related issues and other alternatives, it becomes increasingly challenging for a non-incumbent project sponsor to manage the overall permitting process effectively, raising concerns about the efficacy of the competitive process in such circumstances.

Moreover, these circumstances affect the firmness of the winning bidder's cost cap for the project, which allows for cap adjustment due to changes in project scope, design, or schedule. At this rate, the project likely will not be placed in service until at least four or five years after the planned-for in–service date. This calls into question the benefit of running time-, resource-, and cost-consuming competitive solicitations for lower-voltage, local transmission facilities, particularly (1) if regulators consider alternative distribution-level (or transmission-level) solutions or (2) when cost containment proposals that may arise out of a competitive solicitation allow for cost cap adjustment due to *force majeure* events, regulator-ordered modifications or unanticipated environmental mitigation measures, and project scope or schedule changes.

c. ETCC Fails to Address Any of the Issues Associated With Making Interconnection-Related Upgrades Subject to Competitive Solicitation

ETCC seeks to reverse the Commission's prior ruling that Order No. 1000 does not apply to transmission facilities constructed through the generator interconnection process.[124] Extending competitive solicitations to every network upgrade resulting from

[124] ETCC Comments at 18.

the generator interconnection process raises numerous issues.[125] First, conducting competitive solicitations for these upgrades would invariably delay construction timelines, which are already the primary reason interconnection customers take so long to come online. Any reform the Commission proposes to accelerate interconnection processes could be negated by requiring interconnection upgrades to go through competitive solicitation. Second, most interconnection-related network upgrades are not large transmission projects like building new transmission lines. Third, conducting competitive solicitations would complicate generator interconnection agreements, relationships, and processes, which are three-party arrangements.

The Commission recognized potential problems in Order No. 2003-A when it rejected arguments that interconnection customers should be able to construct and operate Transmission Provider Interconnection Facilities and interconnection-related Network Upgrades on the transmission provider's system. The Commission stated that "such a regime would fragment the Transmission System, thereby undermining reliability."[126] ETCC does not address these issues and identifies no changed circumstances that warrant reversal of the Commission's prior findings.[127]

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[125] The opportunity for an interconnection customer to build stand-alone upgrades puts the construction of the upgrade under the control of parties who have an interest in having the upgrade completed in a timely manner. Opening the process to parties who have no stake in the generation project and possibly competing interests with the proposed generator could result in unintended consequences.

[126] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, 106 FERC ¶61,220 at P 230 (2004) (Order No. 2003-A).

[127] SWP goes even further than ETCC and requests the Commission make all upgrades of existing facilities subject to competitive processes. In Order No. 1000, the Commission expressly declined to make upgrades to existing facilities subject to competitive solicitation, and SWP offers no compelling reasons to change that decision. Order No. 1000 at P 31; Order No. 1000-A at PP 426-27. Property rights issues, litigation risk, and logistics challenges alone make this untenable.

d. Commenters Fail to Address the Potential Burdens, Costs, and Delays Associated with Making Projects Below 200 kV Subject to Competitive Solicitation

The CAISO expends significant costs, staff time, and resources conducting competitive solicitations for regional transmission facilities. Oftentimes CAISO resources required to focus on the planning challenges associated with the transition to renewable energy integration and other matters are diverted to support competitive solicitations. Also, the CAISO has had to outsource other work to contractors while its staff are working on competitive solicitations. Commenters' proposal to make projects below 200 kV subject to competitive solicitation will increase these challenges. Further, when faced with multiple competitive solicitations, the CAISO has had to stagger them, delaying the approval process for some projects. Expanding the projects eligible for competitive solicitation will increase the number of competitive solicitations the CAISO must conduct, likely causing additional delays. The Commission should consider these factors in determining whether to expand the projects eligible for competitive solicitation. Further, local low-voltage transmission upgrades typically are smaller in scale, and cost less, than regional transmission upgrades.[128]

Finally, the CAISO has so far avoided the need to seek a ROFR for "immediate need" projects as the Commission has accepted in other ISOs and RTOs. However, if the CAISO has to conduct more competitive solicitations because of expanded eligibility

[128] Local facilities are also generally located closer to existing transmission owner maintenance facilities and staff.

or it faces timing constraints for local transmission projects with shorter completion timelines, it may have to consider seeking approval for such a mechanism.

2. State Entities Lack the Authority to Decide Whether a Region Should Use Competitive Solicitations or Determine the Scope and Applicability of Any Such Competitive Processes

The CPUC argues that, to the extent the Final Rule allows regional flexibility as to whether competitive processes will be part of a region's planning process, states should make that decision rather than grid operators or other public utilities.[129] The Commission should not adopt this proposal as it would deprive ISOs and RTOs and other public utilities of their ability in the first instance to establish the terms and conditions for the services they provide under the FPA.

Public utility transmission providers such as the CAISO are responsible for transmission planning in the regions where they operate. The terms and conditions of their transmission planning processes are set forth in their open access transmission tariffs on file with the Commission. For example, the CAISO tariff specifies that "*[t]he CAISO* will develop a comprehensive Transmission Plan and approve transmission solutions using the Transmission Planning Process set forth in" the tariff.[130] The transmission planning provisions of public utility tariffs must comply with minimum Commission requirements, but it is the public utility transmission providers themselves who determine the specific planning provisions to include in their tariffs, subject to Commission approval.

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[129] CPUC Comments at 104-05.

[130] CAISO tariff section 24.1 (emphasis added).

The Commission cannot compel a public utility (such as the CAISO) to relinquish any of its rights under FPA Section 205 to another entity, including a state entity. FPA Section 205 gives public utilities the absolute right to propose rates, terms and conditions for services under Commission jurisdiction, subject only to the Commission's review and determination that such rates, terms, and conditions are just, reasonable and not unduly preferential or discriminatory.[131] As explained above, courts have held that the Commission exceeds its authority when it "attempts to deprive utilities of their rights 'to initiate rate design changes with respect to services provided by their own assets.'"[132] Those rights include the authority the public utility retains with regard to terms and conditions for transmission planning.[133] If the Final Rule allows regional flexibility as to whether competitive processes will be part of a region's planning process, public utility transmission providers will be the entities to determine whether and how to exercise that flexibility. In the case of the CAISO, it would expect to develop and finalize a compliance proposal that gives due consideration to the input of state authorities in California along with the input of other interested stakeholders.

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131 *Atlantic City*, 295 F.3d at 9-10 (citing relevant court precedent); *PJM Interconnection, L.L.C.*, 176 FERC ¶61,053, at P 31 (stating that it is a "well-established statutory principle that the Commission cannot compel a public utility to give up its section 205 rights").

132 *Atl. City Elec. Co. v. FERC*, 329 F.3d 856, 859 (D.C. Cir. 2003) (quoting *Atlantic City*, 295 F.3d at 10).

133 *PJM Interconnection, L.L.C.*, 173 FERC ¶61,242, at P 52 (2020) (citing *Atlantic City*, 295 F.3d at 9, 10) ("While *Atlantic City* dealt with changes to rate design, it also applied to denial of rights to file "term changes," such as the changes to planning procedures at issue here.").

III. CONCLUSION

For the foregoing reasons, the Commission should take action and issue a Final Rule in this proceeding consistent with the discussion herein and in the CAISO's Initial Comments.

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CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 19th day of September, 2022.

/s/ Martha Sedgley
Martha Sedgley